

An investigation of
matters relating to
the contracts awarded
to ElectroGas Malta Ltd
by Enemalta Corporation

Report by the
Auditor General
November 2018

This report has been prepared under sub-paragraph 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 for presentation to the House of Representatives in accordance with sub-paragraph 9(b) of the First Schedule of the said Act.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Charles Deguara
Auditor General
November 2018



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List of Abbreviations

AEEGSI	Autorità per l'Energia Elettrica il Gas e il Sistema Idrico
AG	Auditor General
BoV	Bank of Valletta
Cal	calendar year
CAMS	Consolidated Asset Management Services
CCGT	combined cycle gas turbine
CEPA	Consolidated Electric Power Asia Ltd
CET	Central European Time
CO	carbon monoxide
COMAH	Control of Major Accidents and Hazards
CPECC	China Power Engineering Consulting Group Corporation
DoC	Department of Contracts
DSME	Daewoo Shipbuilding and Marine Engineering Company Limited
EC	European Commission
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIS	Environmental Impact Statement
EoIC	Expression of Interest and Capabilities
EPC	Engineering, Procurement and Construction
EPOU	Enemalta Professional Officers Union
ERL	Engineering Resources Limited
ESBI	ESBI Engineering & Facility Management Limited
EU	European Union
EWI	Energy World International Ltd
FSRU	floating storage regasification unit
FSU	floating storage unit
GME	Gestore dei Mercati Energetici
GPRS	Gas Pressure Reduction Station
GSA	Gas Supply Agreement
GWU	General Workers Union
HICP	Harmonised Index of Consumer Prices
IA	Implementation Agreement
IPP	Independent Power Producer
IPPC	Integrated Pollution Prevention and Control
KOSPO	Korean Southern Power
kWh	kilowatt hour
KYC	Know Your Customer
LAP _e	Lifetime Average Price of energy
LAP _g	Lifetime Average Price of gas
LNG	liquefied natural gas

LNG SSA	LNG Security of Supply Agreement
MCR	maximum continuous rating
MECW	Ministry for Energy and Conservation of Water
MEH	Ministry for Energy and Health
MEPA	Malta Environment and Planning Authority
MFIN	Ministry for Finance
MFSA	Malta Financial Services Authority
MGP	Mercato Giorno Prima
MI	Mercato Intraday
MLA	multi-lateral lending agency
mmBTU	million British Thermal Units
MOT	Ministry for Tourism
MoU	Memorandum of Understanding
MRA	Malta Resources Authority
MTPA	million tonnes per annum
MVA	Mega Volt Ampere
MVARh	Mega Volt Ampere Reactive hour
MW	Megawatt
MWe	Megawatt electric
MWh	Megawatt hour
MWhe	Megawatt hour electric
MWth	Megawatt thermal
NAO	National Audit Office
NO _x	nitrogen oxides
O&M	Operation and Maintenance
PAC	Public Accounts Committee
PPA	Power Purchase Agreement
PSO	public service obligation
Q	quarter
RfP	Request for Proposals
RUL _{CCGT}	Remaining Useful Life payment of the Special Purpose Company's Electricity Facility
RUL _{LNG}	Remaining Useful Life payment of the Special Purpose Company's Gas Facility
SAMB	State Aid Monitoring Board
SCR	selective catalytic reduction
SGEI	service of general economic interest
SPA	Sale and Purchase Agreement
SPC	Special Purpose Company
SSA	Security of Supply Agreement
S&P	Standard & Poor's
tBTU	trillion British Thermal Units
TFEU	Treaty on the Functioning of the European Union
TWh	terawatt hour

Chapter 1

Introduction

1.1 Request by the Public Accounts Committee

- 1.1.1 On 30 July 2015, the Opposition Members of Parliament on the Public Accounts Committee (PAC) and the Shadow Minister for the Environment, Energy and Transport requested the Auditor General (AG) to investigate matters relating to the selection of ElectroGas Malta Consortium (hereinafter referred to as the ElectroGas Consortium) and the contracts awarded for the supply of gas to and the purchase of power by Enemalta Corporation¹ (hereinafter referred to as Enemalta). The request was signed by the Hon. Tonio Fenech, Chair PAC, the Hon. Dr Mario de Marco, Shadow Minister for Finance and the Hon. Claudio Grech, Shadow Minister for the Economy, members on the PAC, as well as the Hon. Dr Marthese Portelli, Shadow Minister for the Environment, Energy and Transport (Appendix A refers).
- 1.1.2 In the correspondence submitted to the AG, reference was made to the notice of award issued on 12 October 2013 by Enemalta and Government regarding the selection of the ElectroGas Consortium for the construction of a power station and the supply of electricity to Enemalta. The members of the ElectroGas Consortium were Gasol plc and GEM Holdings Ltd, each with a 30 per cent shareholding, and Siemens Project Ventures GmbH and Socar Trading SA, each with a 20 per cent shareholding. In this respect, specific reference was made to the financial statements of Gasol plc, published on 11 September 2014, wherein it was stated that Gasol plc did not have the necessary resources and assets, and was unlikely to source the required capital, to honour its commitments. Applied to the context of public contracts, the principles of good governance and due diligence necessitate safeguards that prevent the award of tenders to companies that are bankrupt, in financial risk, or whose ability to honour commitments is dubious. These principles of governance require that each member of the consortium is of sound financial standing. According to the correspondence, there existed serious doubt as to whether these principles were adhered to in the selection of the ElectroGas Consortium.
- 1.1.3 In addition, reference was made to the state guarantee issued by Government to the ElectroGas Consortium, through which the Consortium could obtain a loan from the Bank of Valletta (BoV). This was deemed as putting at a disadvantage other companies that could have had interest in submitting a bid, since no reference was made to the state guarantee in the call for expression of interest.

¹ Enemalta Corporation was registered as a public liability company in August 2014 following the repeal of the Enemalta Act (Chapter 272) and prior to the enactment of the Enemalta (Transfer of Assets, Rights, Liabilities and Obligations) Act (Chapter 536).

- 1.1.4 Reference was also made to the instructions to bidders issued by Government, which stipulate that, “All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law.” On 24 July 2015, the ElectroGas Consortium announced that Gasol plc no longer formed part of the Consortium. The principles of good governance require that all members of a consortium remain responsible for the execution of a public project, even though this contract was not awarded through tender. Stated in the correspondence was that Government failed to indicate the procedure through which Gasol plc was released from its obligations as a member of the ElectroGas Consortium. These developments raised concerns regarding the integrity of the selection process and that of the project.
- 1.1.5 Finally, cited in the correspondence was the fact that this project would commit subsequent administrations, for Government, through Enemalta, had entered into a long-term security of supply agreement with the ElectroGas Consortium for the purchase of electricity. The terms of this agreement were unknown as the relevant contract was not published, as required by the principle of transparency. The security of supply agreement and the state guarantee were the subject of a review by the European Commission (EC) intended to establish whether European Union (EU) legislation had been infringed, specifically those relating to state aid.
- 1.1.6 All these matters raised concern regarding the purpose and viability of the project, and whether it represented value for money. In this context, the AG was requested to investigate:
- a. the process of selection leading to Government’s award of contracts relating to the construction of a power station and the supply of electricity to Enemalta to the ElectroGas Consortium and determine whether the selection was diligently made and based on the principles of good governance;
 - b. whether documentation indicating the financial standing of each company forming part of the ElectroGas Consortium was requested and whether these documents indicated the risks identified by Gasol’s auditors;
 - c. whether Government was aware of this information, whether this was disregarded, or if unaware, why Government failed to request this information;
 - d. whether Government and/or Enemalta had sufficient and documented proof that the ElectroGas Consortium had the necessary financing to undertake the project as required in the Expression of Interest and Capability (EoIC) and the Request for Proposals (RfP);
 - e. whether Government created favourable conditions for the ElectroGas Consortium, to the detriment of other companies that could have had interest in this project, when providing a state guarantee for a bank loan and whether this guarantee was in breach of Government’s financial regulations;

- f. the process through which Gasol was allowed to withdraw from the ElectroGas Consortium and to determine whether this was in line with the procedure ordinarily applied in similar cases;
- g. the contracts entered into by Government and/or Enemalta for the purchase of electricity from ElectroGas Malta Ltd² (hereinafter referred to as ElectroGas Ltd) and whether the contracts were consonant with the principles of good governance, including transparency, viability and value for money; and
- h. whether the rate at which Government and/or Enemalta agreed to purchase electricity from ElectroGas Ltd was more favourable than that at which Enemalta procured electricity through the interconnector.

1.1.7 On 18 August 2015, the AG acknowledged the correspondence and informed the PAC that the requests made, referred to in the preceding paragraph, would be adopted as the basis of the investigation to be undertaken by the National Audit Office (NAO).

1.1.8 Further concerns were raised by the Opposition Members of Parliament on the PAC and the Shadow Minister for the Environment, Energy and Transport on 21 August 2015. Particular reference was made to the state guarantee, which was to assist the ElectroGas Consortium secure bank loans to finance the project. Noted was that this state guarantee was without precedent and was not included as part of the conditions in the call for tenders issued by Government. Concerns were cited regarding whether this constituted good governance and whether this development was conformant with the provisions of public procurement regulations. Further aggravating these concerns was the fact that Government had increased the state guarantee from €88,000,000 to €360,000,000. Moreover, while the initial guarantee was described as a bridge loan, the revised guarantee was extended to cover a 29-month period, despite that the power station was to be constructed in 18 months. This development was brought to the attention of the NAO, to be included as part of the investigation into the matter (Appendix B refers).

1.1.9 Additional information was brought to the attention of the AG on 25 April 2016 by the Leader of the Opposition, the Hon. Dr Simon Busuttil. Reference was made to the fact that, prior to the 2013 general election, the Nationalist Party had been approached with a proposal for the construction of a new power station. It was alleged that the same proposal was put forward to the Labour Party and consequently agreement regarding this project was reached prior to the election. The proposal submitted to the Nationalist Party was attached to this correspondence in support of this argument. According to the Leader of the Opposition, the proposal was not only very similar to that presented by the Labour Party in its electoral campaign, but nearly identical to the selected project. Furthermore, it was evident that Gasol and GEM, the parties

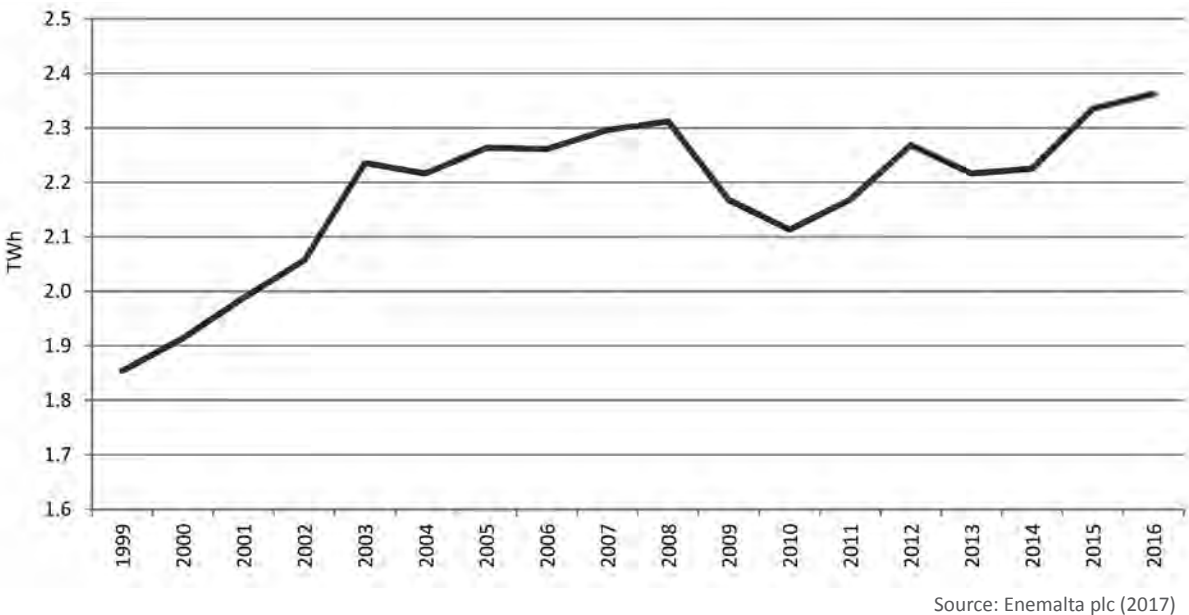
² Following the award of the contracts to the ElectroGas Malta Consortium, the Consortium acquired the company ElectroGas Malta Ltd, through which agreements with Government and/or Enemalta were entered into. More information regarding this matter is provided in section 5.1 of the report.

involved in putting forward this proposal and investing in the project, were those awarded the contract. Moreover, the proposal raised serious concerns regarding the technical specifications for the construction of the power station set by Enemalta, which were influenced, if not dictated, by parties who had a direct interest in this contract. It was in this context that the proposal was brought to the attention of the NAO for consideration as part of its investigation (Appendix C refers).

1.2 Background

1.2.1 In seeking to understand Government’s decision to augment energy supply, one must consider the steady increase in the consumption of electricity that has been registered over the past years. This growth in demand, together with the inefficiencies of ageing generating plants, presents a strain on the current infrastructure. The need for new and efficient generating capacity was justified in terms of a lower cost of electricity generation, improved infrastructural and supply reliability, as well as in terms of environmental impact. This increase in demand is rendered evident in Figure 1.

Figure 1: Annual Generation Demand, 1999-2016



1.2.2 Studies commissioned by the Ministry for Energy and Conservation of Water (MECW) indicated that annual electricity consumption was to increase from 2.2 terawatt hour (TWh) in 2014 to 2.47 TWh by end 2020. Peak load was expected to increase from 430 megawatts (MW) in 2014 to 530 MW by 2030, while average demand was to follow a similar trend, increasing from 280 MW in 2014 to 360 MW by 2030. As at end 2017, the annual electricity consumption was 2.45 TWh, while peak load reached 488 MW.

1.2.3 As at April 2013, the point at which the EoIC was issued, Enemalta’s conventional electricity generation capability was reliant on the Marsa Power Station and the Delimara Power Station (Figure 2 refers). However, 40 per cent of this capacity was either obsolete or required decommissioning for environmental purposes. In fact, the Marsa Power Station was completely disconnected from the national grid in March 2017, with demolition works commencing thereafter. The Delimara 1 plant was switched off and put on cold standby in April 2017, which coincided with the inauguration of the Delimara 4 plant, the subject of this investigation. Other developments entailed the conversion of the Delimara 3 plant to operate on gas, while the Delimara 2 plants were put on standby, intended to serve as emergency capacity. These developments provide the context to Enemalta’s procurement of electricity generated through the Delimara 4 plant.

Figure 2: Enemalta’s Electricity Generation Capability, 2013

Power plant	Generation equipment	Gross supply capacity (MW)	Fuel	Year completed
Marsa B 7-8	2 x steam turbine generators	120	Heavy Fuel Oil	1964-1987
Marsa B GT1	1 x gas turbine	35	Gasoil	1990
Delimara 1 – ST	2 x steam turbine generators	120	Heavy Fuel Oil	1992
Delimara 2A – GT	2 x gas turbines	70	Gasoil	1996
Delimara 2B	combined cycle gas turbine plant – 2 x gas turbine, 1 x steam turbine	110	Gasoil	1998
Delimara 3	8 x internal combustion engines	144	Heavy Fuel Oil	2012
Total		599		

Source: EC (2017)

- 1.2.4 Aside from the Delimara 3 and the Delimara 4 plants, another source of electricity is the 200 MW interconnector with Sicily, which was completed in 2015. Although the interconnector provides Enemalta with a considerable energy supply, this source presents risks beyond Enemalta’s direct control. These include network congestion in Italy and occasional restrictions in supply, as well as unavailability arising from lengthy repairs to the subsea tract.
- 1.2.5 In designing systems that are reliable and that ensure a consistent and adequate generation capacity, prudent management requires a contingency policy that reflects an ‘N-1’ security criterion. In essence, this criterion ensures that in case of loss of any power source due to forced outage, damage or maintenance, the system is able to meet demand regardless.
- 1.2.6 Despite that progress has been registered in terms of renewable sources of energy, reliance on conventional capacity remains a central issue in view of the inherent intermittency of renewable energy, as well as the limitations in deployment and costs of such sources. Although generation from renewable energy sources benefits from priority dispatch, these sources cannot ensure all the non-variable generation capacity required.
- 1.2.7 In the long-term, Government intends to connect to the trans-European natural gas network by means of a gas pipeline with Sicily for the delivery of natural gas intended for the generation

of electricity. Although this is a long-term project, it assumes an element of relevance when considering Enemalta's shift towards gas-fired plants.

- 1.2.8 The National Energy Policy for the Maltese Islands 2012 establishes the energy-related targets for 2020-2050. Measures E6 and E7 are intended to “Determine a strategy to replace the Delimara plant that is flexible and that diversifies Malta from the use of oil as an energy source whilst at the same time ascertaining security of supply” and “Switch island generation plant to natural gas”, respectively. This policy direction reflects the views of key stakeholders and external consultants, whose insight into future investment in the generation of electricity was sought. Central in this respect were the Enemalta Corporation Electricity Generation Plan 2006-2015 and the Malta Resources Authority (MRA) report Energy Interconnection Europe – Malta, dated July 2008. These reports influenced Government's consideration as to what constituted the most appropriate solution to address Malta's energy needs. In essence, this entailed the construction of a new combined cycle gas turbine (CCGT), effectively the Delimara 4 plant, the conversion to gas of the Delimara 3 plant, the closing down of the Marsa Power Station, investment in the transmission and distribution networks and access to the European electricity market through an interconnector with Sicily.
- 1.2.9 In this context, in April 2013, the MECW embarked on a roadmap that was to lead to the upgrading of the energy infrastructure, and provide stability in energy prices through an economically and environmentally sustainable electricity generation system. The construction of a gas infrastructure was to be made possible through private and public-private partnership investments in the electricity generation sector. A critical component of the Ministry's strategy was the establishment of a long-term Power Purchase Agreement (PPA) and a Gas Supply Agreement (GSA) that were to be entered into between Enemalta and private power and gas operators.
- 1.2.10 To this end, Enemalta sourced the construction and operation of a gas and power project on the site of the Delimara Power Station. This was intended to replace existing power generation facilities that were less efficient and less environmentally friendly, while simultaneously diversifying energy sources through the development of a floating liquefied natural gas (LNG) storage unit. The Delimara 4 CCGT was to have a nominal output of 215 MW, which would allow for the decommissioning of ageing plant and establish compliance with the N-1 criterion. The floating storage unit (FSU), a modified LNG carrier vessel with a storage capacity of up to 125,000m³, was to receive and store LNG delivered by conventional LNG carriers and subsequently deliver it by way of gas pipes attached to a fixed jetty to an onshore regasification unit. In turn, the regasification unit was to feed LNG to the CCGT as well as to the Delimara 3 plant when converted to operate on natural gas. Electricity generated in this manner, as regulated through the PPA and the GSA, was to be acquired by Enemalta.
- 1.2.11 Action to this effect was taken by Enemalta on 11 April 2013, with the issuance of an EoIC for the supply and delivery of natural gas under the terms of a long-term GSA and the supply and delivery of electricity under the terms of a long-term PPA. Interested bidders were to propose

solutions for the design, build and operations of the facilities, and indicate their ability to source the required supply of gas. According to the EoIC, the award criteria were to be detailed in the RfP, with the PPA and GSA to be awarded to the bidder whose bid was the most economically advantageous proposal measured as price per kilowatt hour (kWh) of electricity supplied and price per million British Thermal Units (mmbtu) of natural gas, over a period of 18 years. The selected bidder was to be in a position to commence supply of electricity and gas within a maximum of 18 months from the award of contracts. In all, 18 expressions of interest were submitted by the closing date, of which six were shortlisted.

- 1.2.12** On 6 July 2013, an RfP was launched whereby the six shortlisted candidates were invited to submit detailed technical and financial proposals. In clarifications provided to bidders, Enemalta indicated that the project would be backed by a Security of Supply Agreement (SSA), pursuant to which Enemalta's obligation to purchase electricity and gas would be assumed by Government in certain specific circumstances, such as those that would lead to the termination of the agreements. The closing date for submissions was 20 September 2013, by which date three bidders submitted offers. One of the bidders was disqualified for failing to submit a performance guarantee. Following a detailed evaluation of the remaining two bids, on 4 December 2013, Enemalta selected the ElectroGas Consortium as the preferred bidder.
- 1.2.13** Subsequently, Enemalta and the ElectroGas Ltd entered into a number of agreements that provided the contractual structure essential in financing and realising the project. All agreements relating to the project, including the SSA, PPA and GSA, were collectively referred to as the Transaction Agreements. In terms of the Transaction Agreements, ElectroGas Ltd agreed to make available and supply electricity and gas to Enemalta over an 18-year period, at a fixed price for the first five years of the contract. Another contract forming part of the Transaction Agreements was the Implementation Agreement (IA), which stipulated that ElectroGas Ltd was to design, engineer, construct, finance, own, operate, maintain and transfer to Enemalta at the end of the 18-year term the Delimara 4 plant and the LNG regasification facility. In addition, ElectroGas Ltd was to procure LNG on a fixed and indexed price basis for consumption at the Delimara 4 plant and delivery to the Delimara 3 plant, and to procure and maintain the FSU for the term.
- 1.2.14** The IA indicated the scheduled start of the project as 14 April 2015 and specified that all works were to be completed, testing undertaken, and energy and gas delivered 24 months thereafter. The stipulated deadline of April 2017 was not met, resulting in the imposition of delay charges. The Delimara 4 plant became fully operational in August 2017.
- 1.2.15** Reports regarding the total investment in infrastructure that was to be undertaken by ElectroGas Ltd varied, with Enemalta's evaluation of the bid submitted by the ElectroGas Consortium citing an investment of €350,000,000. However, the annual report and financial statements as at 31 December 2015 submitted by ElectroGas Ltd indicated that the plant construction phase was being financed through a full project financing €450,000,000 bridge loan facility, which the Company considered as sufficient to complete the construction and development. A report by

the EC, dated 11 January 2017, cited a comparable total investment of €462,000,000 that was to be fully financed by ElectroGas Ltd and its shareholders.

- 1.2.16 Essential for ElectroGas Ltd to secure the €450,000,000 bridge loan facility was the provision of a guarantee by Government. When long-term financing was obtained by ElectroGas Ltd in December 2017, Government was released from its commitment to provide security for the project.

1.3 Methodology

- 1.3.1 This investigation was conducted in accordance with article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. Other legislation reviewed included the Public Procurement Regulations (Legal Notice 296 of 2010) and the Public Procurement of Entities in the Water, Energy, Transport and Postal Services Sectors (Subsidiary Legislation 174.06) applicable at the time. Also consulted was the EU Utilities Directives (2004/17/EC).
- 1.3.2 Findings presented in this report are based on the documentation submitted to the NAO. In this regard, Enemalta provided this Office with information relating to the EoIC and the RfP, as well as their respective evaluation, and the contractual framework entered into. In addition, documentation on the technical, financial and legal matters relating to the project was also made available. Central in the high-level management of the project was the role of the Programme Review Board, mainly comprised of MECW and Enemalta officials. Review of the minutes of meetings held by the Programme Review Board provided insight into the development of the project.
- 1.3.3 It is to be noted that requests for information and queries directed to the Permanent Secretary Ministry for Energy and Water Management were redirected to the Permanent Secretary Ministry for Tourism (MOT). The latter was, during the period under review, Permanent Secretary Ministry for Energy and Health (MEH). The continued involvement of the Permanent Secretary MOT in this project, until its completion, beyond his term at MEH, was evident to the NAO. This Office considered the retention of responsibility for this project beyond the term at MEH as anomalous.
- 1.3.4 Another key stakeholder, specifically in terms of the guarantee provided by Government, was the Permanent Secretary Ministry for Finance (MFIN). In this regard, documentation relating to the bridge loan facilities entered into by ElectroGas Ltd and the corresponding Government guarantees was provided to the NAO. Linked to the matter of financing was the EC's decision on whether the SSA constituted state aid. Documentation related to this matter was also reviewed by this Office.
- 1.3.5 Multiple queries were raised by the NAO following the review of the documentation made available. Although replies to the majority of queries raised were submitted by the relevant

stakeholders, a number remained pending. The majority of queries that remained outstanding were addressed to Enemalta and related to revisions to and implementation of contract conditions, as well as matters relating to the interconnector. Notwithstanding this, the Office acknowledges that Enemalta’s cooperation was instrumental in sourcing information required for the compilation of this audit.

- 1.3.6 Aside from documentation reviewed, the NAO held interviews, taken under oath, with persons who were directly involved in the award of contracts to ElectroGas Ltd. These included the then Minister MECW, the Hon. Dr Konrad Mizzi, the Chair Programme Review Board and the Chair RfP Evaluation Committee. All the interviews held were transcribed by the NAO and a copy submitted to the interviewee, who was requested to endorse the transcript and submit clarifications, if required. Meetings were also held with the Permanent Secretary MFIN and officials of Enemalta.
- 1.3.7 The NAO engaged a technical consultant to assist this Office in its review of the process leading to award of the contracts. Given the complex and technical nature of the project, the assistance sourced in this respect was essential.
- 1.3.8 It must be noted that all public officials referred to in this report are cited by their designation at the time being reported on.
- 1.3.9 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were duly scrutinised and the resultant findings objectively reported on. The relevant documentation and information required were, in most cases and to the best of the NAO’s knowledge, made available to this Office by the various parties. The NAO’s findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.

Chapter 2

The Call for Expressions of Interest and Capability for Energy Supply to Enemalta Corporation

2.1 Issuance of the Call for Expressions of Interest and Capability

2.1.1 A call for EoIC for the supply of energy to Enemalta was issued on 11 April 2013. Information regarding the EoIC was published on the Enemalta website and on the Official Journal of the EU. Candidates were required to register their interest with Enemalta and submit a non-disclosure agreement in order to be provided with the EoIC. The NAO established that Enemalta did not charge any fee for the EoIC document and confirmed that the relevant non-disclosure agreements were submitted.

2.1.2 Expressions of interest were to be submitted by not later than 10 May 2013. Enemalta, in its capacity as the entity responsible for providing electricity to the Maltese Islands, was seeking to enter into energy contracts for the procurement of electricity and gas in line with its strategy of meeting energy demands at the lowest long-term cost while taking into account safety, environmental and related responsibilities. The EoIC reflected Government's policy to promote independent investment in the energy infrastructure in the form of new facilities, favouring the import, storage and regasification of liquefied natural gas and a combined-cycle gas turbine power.

2.1.3 The call was issued for candidates who were willing and able to:

- a. supply and deliver natural gas to Enemalta under the terms of a long-term GSA to fuel Enemalta's own gas-fired power plant; and
- b. supply and deliver electricity to Enemalta under the terms of a long-term PPA.

2.1.4 The energy for the gas and electricity agreements (together the Energy Contracts) was to be sourced from facilities which the selected candidate was to build, own, operate and maintain by 31 March 2015, at Enemalta's Delimara Power Plant site. The model technical solution being considered by Enemalta for the supply required in the Energy Contracts was:

- a. a new LNG delivery, storage, regasification and natural gas supply facility, and
- b. a new gas-fired combined cycle gas turbine electricity generation plant, together with all necessary connections to Enemalta's electricity distribution network and to the relevant site services outlined in the EoIC.

- 2.1.5 Nonetheless, interested candidates were free to propose solutions capable of meeting Enemalta's supply requirements at the lowest cost while ensuring security of supply. Candidates could propose multiple solutions, provided that the mandatory requirements of the EoIC were met in respect of each solution. At this stage of the process, an outline of proposed solutions was deemed sufficient.
- 2.1.6 The candidates determined by Enemalta to have met the requirements of the EoIC could proceed to the next selection stage and receive an RfP. Although the specific Energy Contracts award criteria were to be detailed in the RfP, the EoIC did provide a brief overview to this effect. In summary, the Energy Contracts were to be awarded to the bidder whose bid was the most economically advantageous proposal, measured as price per kWh of electricity supplied and price per mmBTU of natural gas over the evaluation period of 18 years, after taking into account other technical and commercial parameters that were to be stipulated in the RfP. The selected bidder was to be in a position to commence supply of electricity and gas through the proposed solution within a maximum of 18 months following the award of the Energy Contracts.
- 2.1.7 In order to rebalance its energy supplies, Enemalta planned several changes in its electricity supply capacity, with the decommission of aged plant, the conversion of Delimara 3 to operate on natural gas as from March 2015, the completion of a 200 Megawatt electric (MWe) interconnector sourcing electricity from Sicily and contracting for electricity supply under the PPA (Figure 3 refers).

Figure 3: Planned electricity supply capability, 2015

Power plant	Generation equipment	Gross capacity (MWe)	Fuel	Year completed
Marsa B GT1	1 x gas turbine	37	Gasoil	1990
Delimara 2A – GT	2 x gas turbines	74	Gasoil	1996
Delimara 2B	CCGT Plant: 2 gas turbines, 1 steam turbine	110	Gasoil	1998
Delimara 3	8 x internal combustion engines	149	Natural gas	Mar 2015
Interconnector	Interconnector to Sicily	200	n/a	2014
Delimara 4	New plant for electricity supply (PPA)	180-220	Natural gas	Mar 2015
Total		Approximately 770		

Source: Enemalta (2013)

- 2.1.8 In order to achieve the envisaged electricity supply capability, Enemalta issued an EoIC to enter into the Energy Contracts, comprising a GSA and a PPA. The GSA was to entail a long-term gas supply agreement with a Special Purpose Company (SPC), required in order that Enemalta could supply Delimara 3, its own gas-fired generating plant, for an anticipated duration of 18 years, subject to conditions that were to be defined in the RfP. The delivery of gas was to commence as from 31 March 2015. The estimated gas demand for 2015 was set at 4.33 trillion British Thermal Units (tBTU). The GSA was to have an initial fixed price for a minimum of five years from the commencement of commercial operations of the new plant, followed by an indexed price for the remaining period. In addition, to ensure security of supply of energy to Enemalta in terms of the PPA, the EoIC indicated that the SPC was to operate a separate GSA

between the new gas plant and the new generation plant at Delimara 4, supplying electricity in terms of the PPA.

- 2.1.9 Enemalta was also to enter into a long-term PPA with the SPC, which was to give Enemalta exclusive rights to dispatch electricity from Delimara 4 without constraints, for a duration of 18 years. The PPA was to have an initial fixed price for at least the first five operating years, followed by an indexed price for the remaining period. The electricity dispatch profile under the PPA was expected to entail a continuous demand equivalent to 180 to 220 MWe gross, reduced to approximately 160 MWe overnight. Nonetheless, the PPA was to permit other dispatch profiles, including electricity requirement reductions to zero that would result in the shutting down of the plant and restarting when required.
- 2.1.10 Stated in the EoIC was Enemalta's preference to enter into the Energy Contracts with a single entity. Nonetheless, submissions from candidates interested in participating in either of the two Contracts could be considered although preference was to be given to candidates submitting proposals for both the GSA and the PPA. Should sufficient proposals be submitted for both Contracts to ensure a competitive process, Enemalta reserved the right to exclude submissions relating to solely one of the Contracts.

The Special Purpose Company

- 2.1.11 In order to facilitate the process, an SPC was set up as a separate fully-owned subsidiary of Enemalta to take ownership and carry out preparatory measures prior to contract award. Although fully-owned by Enemalta during the pre-contracting phase, ownership of the SPC was to be taken over by the successful candidate on the award of the Energy Contracts. The SPC was to provide all the necessary site studies that were to be distributed as part of the RfP, initiate the process of an Environmental Impact Assessment (EIA) of the site, initiate the planning and permitting process in order to obtain the required development and Integrated Pollution Prevention and Control (IPPC) permits, and hold a lease and associated rights to the site where the proposed development was to be undertaken. The successful candidate was to take over the SPC through which it would build, own, operate and maintain the new gas plant through which the GSA would be supplied, and the new generation plant, through which electricity required in terms of the PPA would be supplied.
- 2.1.12 According to the EoIC, on appointment, the SPC was to make an up-front payment to Enemalta as consideration for arranging the permits, as well as entering the site leases and the Energy Contracts. The amount payable was to be defined in the RfP.

Requirements of the Gas and the Electricity Generation Plants

- 2.1.13 The EoIC provided a number of key details that candidates interested in the GSA were to consider in their submissions. These related to the size of the plant, consideration of overcapacity and possible future modifications, minimum storage facilities, as well as location

and building requirements with respect to the construction and design of the plant. The new gas plant was to be of an appropriate size to meet the aggregate and peak gas supply required by Enemalta under the GSA, as well as the candidate's proposed new generating plant through which electricity required in terms of the PPA was to be supplied. The proposal was to include a minimum of 10 per cent overcapacity in respect of the GSA and PPA, and was to be designed to enable modifications for up to a further 20 per cent increase in supply in terms of the GSA. Storage facilities were to be designed such that the minimum stored quantity of gas was equivalent to 15 days continuous operation at peak demand of both the new generation plant at Delimara 4 and Delimara 3. Candidates were provided with the option to either construct the new gas plant in a specific area onshore, or opt for a barge-mounted facility berthed nearby to the station or moored close offshore. In addition, all buildings, structures and foundations were to be designed and constructed to withstand earthquakes and seismic shocks that could occur in the Maltese Islands, and to at least one grade higher than that appropriate for this type of development.

- 2.1.14 Key details were also provided with respect to the PPA. The candidate, through the acquired SPC, was expected to develop a new generating plant through which electricity would be supplied. The plant was to be based on a proven, advanced design with a capacity sufficient to meet the supply required by the PPA at peak times. The plant was expected to operate primarily at base load, except for night-time hours when actual load was to be met with minimal losses of efficiency and environmental performance. In terms of the PPA, the new plant was to be connected to the electricity distribution network at the 132kV switchboard at the Delimara Power Station, which connection was generally regulated by the Network Code. The new plant was expected to utilise the existing main cooling water infrastructure in place at the Delimara Power Station, consisting of a 'once-through' direct seawater cooling system. The seismic design of the buildings and infrastructure was expected to comply with the same requirements specified under the GSA.

The Site

- 2.1.15 The EoIC identified two potential sites (Areas A and B) at the Delimara Power Station, located on the North-East of Marsaxlokk Bay, close to the sea and equipped with a 200 metre quay with a sea depth of approximately 10 metres. Both sites were on reclaimed land. The sites were subject to occasional heavy localised pollution and therefore all the plant was to be suitably protected against the effects of such conditions. In the design phase of the project, specific regard was to be given to site topology, adjacent plant, existing underground services, exhaust stack, residential areas and the limited area available. Enemalta was to enter into a long-term agreement with the SPC for the lease of the sites.
- 2.1.16 The EoIC also anticipated agreements between Enemalta and the SPC for the provision of common site services such as process water, cooling water and electricity from the existing Enemalta power plant, as well as for the provision of mutually beneficial synergies between the existing Enemalta plants and the new plants. Subject to agreement, Enemalta could provide operating staff for the new generation plant under a staffing contract.

2.1.17 Environmental protection and safety were to be considered as vital requirements, and any proposed plant was to meet applicable environmental and safety standards and regulations. For construction works, permits by the relevant planning, environment protection and safety authorities were required. These necessitated the submission of an EIA and other risk assessments. The relevant permits were to be obtained as early as possible to ensure that the SPC would be able to commence construction shortly after its appointment in October 2013 and to commence supply in terms of the Energy Contracts by 31 March 2015. This was possible to the extent that the permits procured reflected the proposed solution. Plants were to incorporate all recommended techniques and ensure compliance with current EU and local environmental requirements and legislation, as well as any legislation that could be expected to come into force in the near future.

EoIC Submissions

2.1.18 Prospective candidates were to register their interest to participate. Queries or requests for clarifications were to be submitted to Enemalta by not later than 10 days prior to the submission deadline, that is, by 30 April 2013. All replies to queries were to be communicated to all registered candidates at the latest six days prior to the deadline for submissions.

2.1.19 Submissions made under the EoIC were to be structured in a number of sections, namely: candidate data, indicative key Energy Contract terms, an outline of the technical proposals for the new gas and generating plants, any proposed gas supply arrangements, other supporting data, authorisation and a signed copy of the declaration of offer.

2.1.20 Candidate data was to include detailed information about the members forming the 'candidate'. Enemalta placed no limits on the number of members that were to form part of a candidate. However, Enemalta specified that candidate members were to indicate their intention to form a bidding group through a Memorandum of Understanding (MoU). A leader from among the members that would represent the group at the later RfP stage was to be nominated. If the candidate was selected, the members of the bidding group at the RfP stage were to be the same members comprising the candidate at the EoIC stage. No changes to the group composition were to be made unless authorised by Enemalta. Candidates were to include the following members: a named Independent Power Producer (IPP) Developer, a named Financial Adviser and a list of the potential turnkey Engineering, Procurement and Construction (EPC) contractors. The proposed percentage shareholding of each member in the SPC was to be specified. According to the EoIC, equity holding members and the financial adviser were to be in an exclusive relationship and could not be party to other submissions. While the firms listed as potential turnkey contractors or plant manufacturers could appear in proposals made by other candidates, they were not to hold any equity interest in any other candidate or intended to join another bidding group.

2.1.21 According to the EoIC, at least one member of the candidate, with a proposed minimum 20 per cent shareholding in the SPC, was to have acted as the lead developer for at least two

independent energy projects utilising the technology proposed in the submission, each with a total sent out capacity of at least 150 MWe. At least two of the projects must have attained commercial operation. Submissions were to include reference data of projects that the candidate was involved in, including some provided on a build-own-operate model. In addition, a letter of support to the lead member from at least one EPC contractor, with successful experience as lead contractor for at least two other plants operating commercially for more than two years using technology similar to that proposed in the submission, was to be provided.

- 2.1.22** Details of the financial strength and creditworthiness of the candidates was also to be submitted. In terms of the EoIC, the candidate's equity providers were required to have aggregate shareholders' funds³ of at least €150,000,000. Additionally, at least one of the members of the candidate with a proposed shareholding in the SPC of at least 30 per cent, other than the Financial Adviser, was to have an investment grade international credit rating of BBB- or better from Fitch IBCA, Standard and Poor's, or equivalent. If a candidate was unable to meet the latter requirement, the candidate was to evidence the financial stability of its equity providers through a confirmation letter from a reputable financial institution with a credit rating of not lower than BBB+, evidencing the candidate's equity providers' financial ability to borrow sufficient funds. Alternatively, the candidate was to provide the audited financial statements for the previous three years, demonstrating that the equity provider would have sufficient funds available from the cash flow from operations. In addition to the financial statements, an officer of the equity provider was to confirm that there were no material facts or circumstances that could affect the equity provider's cash flow from operations. Where an equity provider was a subsidiary of another company, the financial standing of the parent company would be considered only if a letter of support for the funding of the subsidiary was provided with the submission. To ensure the ability to raise the necessary finance, the EoIC stipulated that at least one member of the candidate was to have acted in a significant leading role for an independent project that had successfully raised non-recourse or limited recourse financing of at least €300,000,000 during the last four years.
- 2.1.23** Submissions were also to include an outline of the expected SPC business plan for at least the duration of the Energy Contracts. The plan was to include estimates for EPC costs, separately for the gas plant through which the GSA was to be supplied and for the new generating plant through which the electricity required in terms of the PPA was to be sourced. Also to be indicated were the financing structure, operation and maintenance costs and other applicable costs.
- 2.1.24** Indicative pro-forma GSA and PPA term sheets, annexed to the EoIC, were to be completed by candidates. Submissions in terms of the GSA were to include an outline technical description of the proposed gas plant, supported by technical documentation and drawings. The following data was to be included in the submission:
- a. specification as to whether floating or onshore storage was being proposed;
 - b. site preference;

³ Shareholders' funds means the total capital employed, including net working capital, less long-term liabilities.

- c. suggested plant layout including dimensions, civil works and foundations required;
- d. expected marine impacts;
- e. expected size and frequency of LNG shipments or other transport arrangements;
- f. key milestones from SPC appointment to commercial operation date;
- g. safety systems, zones and standards to be employed for LNG deliveries and storage;
- h. personnel requirements for operations;
- i. maintenance requirements;
- j. reliability and availability and scheduled downtime;
- k. storage capacity;
- l. origin of any LNG supply;
- m. regasification characteristics;
- n. indicative range of gross heating value of regasified gas; and
- o. an environmental impact summary.

2.1.25 Submissions in terms of the PPA were to include an outline technical description of the proposed plant, supported by technical documentation and drawings. The following data was to be included in the submission:

- a. site preference;
- b. size of site required;
- c. lay-down and storage areas needed for construction;
- d. proposed technology and principal dimensions;
- e. plant type and gross capacity in MWe;
- f. minimum stable generation gross capacity in MWe;
- g. net efficiency for export energy at lower heating value;

- h. cooling system concept;
- i. indicative reliability and availability;
- j. nitrogen oxide (NO_x) emission rates;
- k. noise levels;
- l. stack height;
- m. fuel pressure requirements;
- n. outline of fuel connection and conditioning;
- o. operations and maintenance (O&M) and long-term service agreement arrangements, indicative O&M schedule and indicative costs;
- p. number of O&M personnel proposed;
- q. key milestones from SPC appointment to commercial operation date;
- r. reference list of comparable plants;
- s. effluent quantities, composition, treatment and disposal;
- t. vibration and noise characteristics; and
- u. an environmental impact summary with respect to construction and operation.

2.1.26 Submissions were to include a brief description of any proposed LNG supply arrangements from source to site, with indicative LNG specification, expected delivery logistics, delivered amounts and frequency. In addition, submissions were to include further documentation that the candidates considered useful for determining their selection to the RfP stage. Documentation that would expedite permit applications for the proposed plants was also to be submitted.

The Competitive Process

2.1.27 According to the EoIC, the competitive process was to be guided by Legal Notice 178 of 2005 - Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, despite the fact that these regulations did not specifically apply to the supply of energy or fuels to Enemalta. Additionally, candidates were expected to apply to qualify within the terms of the EoIC for the purpose of being selected to the next phase, the RfP. Although partial EoIC submissions to enter into either a PPA or a GSA would be considered, a consolidated submission was preferred.

2.1.28 Candidates who were considered to have the technical, financial and administrative ability to meet the requirements of the EoIC would be selected to proceed to the RfP stage of the process, and would then be expected to submit detailed and fully-termed bids. Unsuccessful candidates were also to be informed of the outcome of the EoIC review process. Brief details on the RfP and the award criteria were provided in the EoIC; however, the specific criteria for evaluation were to be provided by Enemalta in the RfP that was to be issued following the completion of the EoIC process. The Energy Contracts would be awarded to the most economically advantageous bid selected under the RfP process, measured as price per kWh of electricity supplied and price per mmBTU of natural gas energy supplied over the 18-year term, from the technically and commercially acceptable offers.

2.1.29 Following the award of the Energy Contracts, the selected candidate was expected to take over the SPC. The SPC would then have a maximum of 18 months to complete and commission the new plants in order to commence supply obligations under the Contracts.

EoIC Submissions and Opening Procedures

2.1.30 Submissions in terms of the EoIC were to be made by not later than 10 May 2013. One original and two hard copies, as well as an electronic version of the bid were to be submitted.

2.1.31 Submissions were to be opened by a purposely-appointed committee tasked with verifying that submissions were complete, duly signed and generally in order. At the opening of the submissions, the names of the candidates, notifications of modification and withdrawal, as well as other information deemed relevant by Enemalta were to be announced. Following the opening session, no information relating to the examination, clarification, evaluation and comparison of submissions, or recommendations concerning selection, was to be disclosed. In the interests of transparency and equal treatment, candidates could be required to provide clarifications, at the sole written request of the selection committee. Nonetheless, clarifications were not to serve as means of correction of formal errors or major restrictions affecting the performance of the Contracts, or distorting competition. Late submissions would not be considered.

Evaluation, Selection and Redress

2.1.32 The first stage of the EoIC evaluation process entailed the determination of whether submissions were in compliance with the stipulated administrative requirements. Submissions would be deemed compliant if the conditions, procedures and specifications were satisfied and not substantially departed from. Substantial departures were identified in the EoIC as those that would affect the scope, quality or execution of the project, differ widely from the objectives, limit the rights of Enemalta or the candidate's obligations under the contract, or distort competition for compliant submissions. If a submission was not found compliant with the mandatory requirements, it was not to be considered further.

- 2.1.33** Following the administrative analysis, the selection committee was to decide on the admissibility of each submission, taking into account all factors described in the EoIC. At this stage, the committee could request clarifications from candidates, provided that the submission was not substantially altered.
- 2.1.34** Any decision taken by Enemalta regarding the eligibility of candidates was to be published on its official website, with candidates informed of the decision within two working days from publication. Candidates aggrieved by the decision were entitled to seek redress by filing an action before the Courts of Malta for a declaration that the candidate should not have been excluded and a request for damages. If the Court found in favour of the candidate, damages were to be limited to the costs incurred by the candidate in making the submission, unless evidence was provided that the exclusion was made in bad faith or was unreasonable, in which case damages could include any other direct, foreseeable damages that the candidate proved to have incurred. Notwithstanding any Court action instituted, nothing was to be deemed to prohibit the continuation of this competitive procedure, including the award and execution of the Energy Contracts.
- 2.1.35** An indicative timetable of the key stages of the process was outlined in the EoIC; however, noted was the fact that these were subject to change at Enemalta's discretion (Figure 4 refers).

Figure 4: Timetable of key stages, EoIC

Stage	Date	Time (CET)
Deadline for request for any clarifications of the EoIC from Enemalta	30/04/2013	-
Last date for the issuance of EoIC clarifications by Enemalta	04/05/2013	-
Deadline for EoIC submissions	10/05/2013	11.00am
Proposal opening session	10/05/2013	11.00am
Planned issue of RfP to successful candidates	10/06/2013	-
Deadline for submission of proposals	31/07/2013	11.00am
Award of Energy Contracts	01/10/2013	-
Start of energy supplies under the Energy Contracts for the new plants	31/03/2015	-

Source: Enemalta (2013)

Other EoIC Conditions

- 2.1.36** Cited in the EoIC were various provisions relating to ethical conduct. Among points raised, it was noted that any attempt by a candidate to obtain confidential information, enter into unlawful agreements with competitors, or influence the evaluation committee, would lead to the rejection of the submitted offer and could result in administrative penalties. Enemalta reserved the right to suspend or cancel the competitive process if corrupt practices of any kind were identified at any stage of the shortlisting process.
- 2.1.37** Aside from provisions relating to data protection and the termination of the competitive process, the EoIC outlined other general considerations. Of note was Enemalta's right to reject any or all submissions and to modify or cancel the process. Furthermore, information obtained through the EoIC could be utilised by Enemalta in the preparation of the RfP. Emphasised was

that candidates could propose a range of commercial and technical solutions, provided that these were duly substantiated.

Exclusion Criteria

- 2.1.38 A number of criteria that would exclude candidates from participation in this competitive process were stated in the EoIC. These included instances where the candidate was declared bankrupt, was under order for compulsory winding up, was being administered by the court, or had entered into an arrangement with creditors. A conviction of grave professional misconduct would similarly result in exclusion. Furthermore, failure to fulfil obligations relating to the payment of social security contributions and tax would also result in exclusion.

Clarifications

- 2.1.39 Pursuant to the EoIC, prospective applicants were afforded the opportunity to submit queries regarding the call. According to the EoIC, all queries were to be made in writing up to 10 days prior to the submission deadline, that is, 30 April 2013. Enemalta was to provide written responses to all submitted queries and requests for clarification at least six days ahead of the submission deadline. Stipulated in the EoIC was that, if Enemalta were to provide further information in addition to the call, such information was to be concurrently circulated among all prospective candidates.
- 2.1.40 In total, Enemalta provided the NAO with records relating to 30 requests for clarification, with certain requests comprising multiple queries. Enemalta issued three batches of clarifications within the stipulated timeframe, addressing the various queries raised. In the majority of instances, queries constituted requests for clarification or requests for additional information relating to all aspects of the EoIC. Among others, these related to the candidate and site data, proposed technical solutions, indicative contract terms, price indexation and timeframes. Other queries were broader in nature, relating to matters such as local taxation and default liability. Some queries were in effect requests for extension to the deadline of submissions to the EoIC, which were not considered by Enemalta.
- 2.1.41 Some of the queries received were specific to particular candidates, who sought confirmation on the suitability of certain aspects of their application. One prospective candidate sought confirmation regarding the suitability of its members. In response, Enemalta stated that it was unable to comment on the suitability, or otherwise, of proposed members except through the process set out in the EoIC. Other applicants requested confirmation from Enemalta whether their proposed technical solution was acceptable. In this respect, Enemalta's response was that the proposed solution would be acceptable; however, alternative options would also be satisfactory.
- 2.1.42 One prospective candidate requested Enemalta to confirm whether it would consider applicants whose submission lacked certain information, such as not providing a technical proposal. In its

response, Enemalta stated that no exceptions to the minimum qualification criteria specified in the EoIC would be accepted. However, Enemalta noted that at this stage it was only requesting an indicative, outline technical proposal.

2.1.43 Another request for clarification related to whether changes to the indicative timetable specified in the EoIC were possible. In reply, Enemalta stated that 31 March 2015 was the intended target date and, subject to other candidates confirming that this target could be met, no changes were anticipated. Another prospective candidate also commented on the fact that the construction period of 18 months was deemed too short for the completion of the power station. Enemalta maintained that no extension was contemplated at the time.

2.1.44 Clarification was also sought as to whether it was possible for the selected bidder to generate third party revenue from the sale of gas or electricity locally or overseas. In reply, it was stated that the EoIC contemplated facilities that were necessary to supply Enemalta under the Energy Contracts and no capacity for additional sales was anticipated. Enemalta also made reference to the exclusive dispatch rights held with respect to the PPA during the agreed term. However, on the expiry of the Energy Contracts, the selected candidate had the option to either negotiate a new contract with Enemalta or sell the facilities to Enemalta at an agreed price. Another query related to the required experience of the EPC contractor. The query highlighted an ambiguity in the EoIC, which was consequently rectified through an amendment in the relevant section of the EoIC.

2.1.45 In other instances, Enemalta did not provide the additional information requested and indicated that the information would be provided at a later stage during the RfP or that matters raised were already specified in the EoIC. One such query related to the provision of a sovereign guarantee, wherein the prospective candidate enquired whether it was possible to obtain such a guarantee from Government with regard to the PPA. In its response, Enemalta stated that the issue was currently under review and would be clarified at the RfP stage.

2.2 Design of the Evaluation Process

Appointment of the EoIC Evaluation Committee

2.2.1 The EoIC Evaluation Committee was appointed on 9 May 2013 through letters of appointment issued by the CEO Enemalta, informing members of their specific role within the Committee. The Evaluation Committee was composed of a Chair, a Commercial Evaluator, a Financial Evaluator and two Technical Evaluators. The Chair EoIC Evaluation Committee was the CEO of Beat Consulting and also attended meetings of the Programme Review Board. With respect to the members, the Commercial Evaluator was a Consultant with DNV KEMA, the Financial Evaluator was the RSM Managing Partner, while one of the Technical Evaluators was another Consultant with DNV KEMA. The other Technical Evaluator was an employee of SGS Italia SpA.

2.2.2 Specified in the letters of appointment were the terms of reference to be fulfilled by the EoIC Evaluation Committee. These comprised the:

- a. development of an appropriate evaluation mechanism based on the criteria outlined in the EoIC;
- b. review of proposals submitted by prospective candidates against the established criteria;
- c. determination and, if necessary, the sourcing of clarifications from candidates on aspects of their submissions;
- d. participation in the voting process wherein recommendations are made on the eligibility of a candidate to qualify to the RfP stage;
- e. submission of a report to the Programme Sponsoring Group⁴ on the candidates that qualified to the RfP stage;
- f. notification to all candidates of the decision taken by the EoIC Evaluation Committee;
- g. preparation of a report on the technical and financial options presented by the successful candidates, which was to be submitted to the Programme Sponsoring Group;
- h. provision of feedback and appropriate support to the technical team engaged in the preparation of the RfP regarding common factors in relation to technological solutions and financial mechanisms proposed in reply to the EoIC; and
- i. participation as witnesses in any judicial proceedings arising from unsuccessful candidates seeking redress with respect to the outcome of the EoIC.

In view of the terms of reference set and having reviewed the professional background of the members of the EoIC Evaluation Committee, the NAO ascertained that the expertise of the Committee was appropriately matched to the task at hand.

2.2.3 The members of the EoIC Evaluation Committee signed declarations of impartiality and confidentiality. In the declaration, members asserted their independence from all parties which stood to gain from the outcome of the EoIC evaluation process and agreed not to disclose any of the confidential information made available to them throughout this process. The NAO reviewed all declarations made by the EoIC Evaluation Committee.

⁴ The Programme Sponsoring Group was essentially responsible for establishing the overall strategy and direction of the project. The NAO noted that the Programme Sponsoring Group was at times referred to as the Programme Steering Board, the Programme Management Board or the Programme Review Board – Malta Power and Gas Programme; however these are one and the same.

2.2.4 In fulfilling its functions, the EoIC Evaluation Committee was guided by an Enemalta standard operating procedure, titled ‘The Opening of EoIC Submissions Procedure’, a copy of which was forwarded to the NAO. Detailed in this procedure were the requirements to be adhered to when opening the tender box, the processing of submitted bids, governance of the evaluation process and the evaluation process outcome. In addition, a Notary was appointed to oversee the opening of the tender box, verify and register bids submitted, seal copies of the bids, hand over the bids to the EoIC Evaluation Committee and prepare a report thereon.

Process for the Receipt and Opening of EoIC Submissions

2.2.5 By the closing date, that is, 10 May 2013, a total of 19 bids were submitted in reply to the EoIC (Figure 5 refers). The tender box was opened in the presence of the appointed Notary, two Enemalta officials, and members of the public and the press. The Chair EoIC Evaluation Committee and another Enemalta official were also present in the capacity of observers.

Figure 5: List of bids received at EoIC stage

Candidate Reference	Candidate Name
1	ElectroGas Malta Consortium
2	Daewoo Shipbuilding & Marine Engineering Co. Ltd
3	Edison S.p.A
4	GMR Energy Ltd
5	Bumi Armada
6	Abener Energia SA
7	Vitol SA
8	Endeavor Energy Holdings LLC and BB Energy
9	Yildirim Energy Investments INC
10	Energy World International Ltd
11	Soffimat–Gestamp
12	Med-Gas AS
13	GasFin Development SA
14	China Power Engineering Consulting Group Corporation
15	Independent Power Corporation PLC
16	Mag Air Energy LLC
17	DEVCO International LLC
18	Shell Gas & Power Developments B.V.
19	Gazprom Marketing & Trading Ltd

2.2.6 The 19 submissions were assigned a reference number and listed in the report drawn up by the Notary. Departures from the requirements stipulated in the EoIC in terms of the completeness of bids were noted. While bidders were requested to submit an original, two copies and a soft copy of their bid, in one submission only the original was forwarded. The Notary also made reference to two other bids wherein no soft copy was included, one of which comprised two original versions of the same document.

2.2.7 Copies of the submissions were placed in two separate boxes, each box containing a copy of each submission (bar that for which no copies were forwarded), which boxes were sealed. The original, a copy and the soft copy corresponding to each submission were handed to the EoIC Evaluation Committee by the Notary. The sealed boxes, containing the remaining copies, were deposited with the Notary to be held under the terms of the Deposit Agreement. Proceedings relating to the opening and registration of EoIC bids were then declared closed by the Notary.

2.3 The EoIC Evaluation Process

2.3.1 The EoIC evaluation process was concluded on 1 June 2013, with the submission of correspondence highlighting the outcome thereof by the Chair EoIC Evaluation Committee to the Chair Programme Review Board. Annexed to this correspondence was the EoIC evaluation report. According to this correspondence, all submissions were reviewed and evaluated in accordance with the criteria outlined in the EoIC. Following the review of each submission, the members of the EoIC Evaluation Committee were requested to vote in favour or against each candidate. In order to qualify for the RfP stage, a candidate was to obtain, as a minimum, a simple majority of votes. Minutes of meetings held by the EoIC Evaluation Committee were not maintained; however, the relevant decisions arrived at were recorded in the EoIC evaluation report.

2.3.2 Cited in the EoIC evaluation report was that the EoIC consisted of two key parts, namely, the proposed technical solution and evidence to demonstrate capability to deliver. According to the EoIC evaluation report, information submitted with regard to the proposed technical solution to meet the requirements of the PPA and GSA was not intended to be utilised as part of the evaluation process, but was to serve as a means of sourcing potential solutions that could be explored in the process. On the other hand, the provision of evidence to demonstrate capability was required in terms of the EoIC to ascertain the financial, technical and commercial capabilities of candidates to deliver secure, reliable and efficient electricity and gas supplies to Enemalta. The EoIC Evaluation Committee based its assessment on the four criteria outlined in the EoIC, that is, administrative compliance, exclusion criteria, technical experience and reputation, and commercial experience and robustness.

2.3.3 Administrative compliance was to determine the extent to which candidates complied with the reporting and information requirements established in the EoIC. According to the EoIC evaluation report, effectively none of the candidates fully complied with the administrative requirements. However, the Committee adopted a lenient stance and did not disqualify candidates on the basis of missing information, as long as an informed opinion on the candidates' suitability could be ascertained through the information provided, that publicly available, and that obtained through requests for clarifications.

2.3.4 Exclusion criteria were defined in the EoIC as elements, such as bankruptcy, failure to pay taxes and fraudulent activities, which would exclude candidates from progressing to the RfP stage. Candidates were not requested to submit declarations at this point; however, the EoIC

evaluation committee conducted a preliminary Internet search to identify publicly available evidence contributing to the possible exclusion of candidates. Stated in the evaluation report was that no factors were identified that merited the exclusion of candidates. Nonetheless, the EoIC Evaluation Committee noted that it was imperative that a detailed due diligence process was undertaken and that formal declarations were signed by the candidates at RfP stage.

- 2.3.5 The EoIC identified a number of criteria that were to evidence the experience and expertise of candidates in the field of power plant and LNG terminal development. A key requirement was that such expertise was to be attributable to one of the key shareholders of the consortium with a minimum shareholding of 30 per cent. Cited in the EoIC evaluation report was that, while a significant proportion of candidates had relevant direct experience in developing gas-fired power plants, this was not the case for LNG. In this context, the EoIC Evaluation Committee resolved to accept references provided by candidates to LNG projects attributable to their EPC contractors. In the case of power plants, the original criteria established in the EoIC were retained.
- 2.3.6 With respect to commercial experience and credit worthiness, candidates were required to demonstrate and provide evidence to substantiate their capability to source appropriate finance and the management expertise necessary to design, develop, build, own and operate the proposed solution. In addition, candidates were required to demonstrate access to an appropriate gas supply stream capable of providing a reliable source to the infrastructure to be developed. Moreover, candidates were to demonstrate a degree of credit worthiness or robust capital to back the project. In this context, candidates were to provide evidence of a minimum of shareholders’ funds of €150,000,000 and an appropriate credit rating from a reputable credit rating agency or a letter of support from a reputable bank of their financial standing.
- 2.3.7 Members of the EoIC Evaluation Committee were entrusted with the examination of a defined aspect of each submission. A spreadsheet, based on the criteria outlined in the EoIC, was utilised for the evaluation process. Individual evaluations by the Committee members were followed by the joint review of submissions, intended to determine the overall suitability and the demonstrated capability to deliver the appropriate source of power and gas to Enemalta. The Committee was to reach consensus on whether a particular candidate was to be recommended to pass to the RfP stage or fail. Borderline cases were given the benefit of doubt and recommended to pass. A number of borderline submissions were approved to progress to the next stage subject that certain conditions were be addressed at the RfP stage.

2.3.8 During the evaluation, legal advice was sought with respect to a number of submissions. In the submission by Gazprom, it transpired that no actual submission had been made. Instead, a non-disclosure agreement was received by Enemalta and was erroneously deposited in the tender box by an Enemalta official. Noted in the report was that Gazprom could have submitted a bid by 10 May 2013, which deadline had then elapsed. Following legal advice, it was decided that Gazprom was not to be reintegrated in the process. With respect to the submission by Shell Corporation, this consisted of correspondence whereby the candidate indicated its potential interest in bidding; however, did not propose any potential solutions as required by the EoIC. The EoIC Evaluation Committee noted that the submitted documentation fulfilled some of the required evidence and criteria. Since technical proposals were not being considered as key criteria, based on legal advice sought, it was recommended that a clarification be issued to ascertain Shell's interest to participate in the RfP should it be shortlisted.

2.3.9 Legal advice was also sought with respect to candidates who submitted partial solutions to the EoIC. It was acknowledged that these submissions were allowed under the terms of the EoIC. Nevertheless, if sufficient complete submissions were received, the EoIC allowed for Enemalta to exclude partial submissions. The EoIC Evaluation Committee noted that a satisfactory number of complete submissions was received, although a number of candidates who submitted partial solutions also demonstrated good credentials. In view of the fact that Enemalta did not wish to enter into separate agreements with a power generator and a gas supplier due to the envisaged technical and commercial complexity involved, legal advice was sought. Specifically, the possibility of enabling separate candidates to merge and submit a joint bid at the RfP stage was explored. According to the legal advice obtained, correspondence was to be submitted to these candidates to ascertain their interest in a possible joint submission and obtain their permission to disseminate their particulars to other candidates submitting complementary individual bids. Such a process was to be concluded prior to the publication of shortlisted candidates.

2.4 Overview of EoIC Submissions

2.4.1 The EoIC evaluation report provided a high-level overview of every candidate's submission and the criteria on which the EoIC Evaluation Committee decided to recommend a fail or a pass. Of the submissions, ten were for both the PPA and the GSA, five were limited to the PPA and three offered solutions only in respect of the GSA (Figure 6 refers).

Figure 6: EoIC submissions for the PPA and/or GSA

Candidate Reference	Candidate Name	PPA	GSA
1	ElectroGas Malta Consortium	Yes	Yes
2	Daewoo Shipbuilding & Marine Engineering Co. Ltd	Yes	Yes
3	Edison S.p.A	Yes	Yes
4	GMR Energy Ltd	Yes	No
5	Bumi Armada	Yes	Yes
6	Abener Energia SA	Yes	No
7	Vitol SA	No	Yes
8	Endeavor Energy Holdings LLC and BB Energy	Yes	Yes
9	Yildirim Energy Investments INC	Yes	Yes
10	Energy World International Ltd	Yes	Yes
11	Soffimat–Gestamp	Yes	Yes
12	Med-Gas AS	Yes	Yes
13	GasFin Development SA	No	Yes
14	China Power Engineering Consulting Group Corporation	Yes	No
15	Independent Power Corporation PLC	Yes	No
16	Mag Air Energy LLC	Yes	No
17	DEVCO International LLC	Yes	Yes
18	Shell Gas & Power Developments B.V.	No	Yes
19	Gazprom Marketing & Trading Ltd	-	-

A summary of each evaluation is reproduced hereunder.

ElectroGas Malta Consortium

2.4.2 The ElectroGas Consortium comprised Siemens, Socar and Gasol through a joint venture company, and Tumas Group and Gasan Group through GEM Holdings Ltd. The Consortium proposed a CCGT plant to be located on Site A with two potential variants, either three small gas turbines feeding into one steam turbine, or one large gas turbine feeding into a steam turbine. The proposed solution required a footprint of 10,000 square metres, with an envisaged efficiency of 53.6 per cent. The LNG storage solution proposed by the Consortium consisted of a fuel storage and regasification unit (FSRU), with a storage capacity of 126,000 cubic metres, moored in the vicinity of Site B. The Consortium also proposed the installation of a separate onshore storage facility with a capacity of 20,000 cubic metres together with a small regasification unit. A breasting dolphin, a central unloading platform and a wave breaker were also to be constructed. The Consortium proposed the sourcing of LNG directly from Qatar and indicated that ten shipments of 75,000 cubic metres were expected to be delivered yearly. Nonetheless, the EoIC Evaluation Committee noted that the Consortium provided no real evidence of its capability to deliver LNG other than a letter from a potential supplier indicating willingness to supply.

2.4.3 In the evaluation report, the EoIC Evaluation Committee noted that the ElectroGas Consortium had robust references to similar projects undertaken by the members of the Consortium.

However, none of the members had direct experience in the LNG market. Despite this shortcoming, the Committee noted that the Consortium had secured the commitment of an EPC contractor who had relevant experience in this respect. The Committee indicated that the technical proposal was well laid out and detailed; in fact, it was considered the most comprehensive of all EoIC submissions. Notwithstanding this, the Committee was of the opinion that the weakest aspect of this proposal was the Consortium's capability to supply LNG, which was to be addressed at the RfP stage. Furthermore, the Consortium did not commit to the timetable set out in the EoIC and proposed to commence the supply of electricity and gas in June 2015.

2.4.4 The evaluation report indicated that the project proposed by the ElectroGas Consortium was to be mainly financed through loans with a gearing ratio of 80 per cent. The required threshold of shareholders funds exceeded the stipulated €150,000,000 and evidence documenting the Consortium's credit rating in excess of BBB- was submitted. The Consortium's reliability was also supported by a bank letter of support. Internet searches conducted by the EoIC Evaluation Committee did not return negative results or reasons for exclusion; however, it was noted that until 2010, Siemens had been blacklisted by the World Bank. Moreover, reference was made to the involvement of Siemens in cases of bribery, which were reportedly resolved through the payment of hefty fines and an overhaul of its procurement process. The Consortium's financing capability was not questioned, although the Committee expressed an element of concern with regard to the overall capability of the lead developer to manage the entire business. Nevertheless, the Committee noted that this was mitigated by the fact that each member had the required experience to manage the various elements of the value chain. According to the evaluation report, the Consortium quoted a starting price of €100/MWh for power and €11.28/mmBTU for gas, although the latter was considered to be particularly low by the Committee.

2.4.5 The EoIC Evaluation Committee recommended that the ElectroGas Consortium proceed to the RfP stage. However, the RfP evaluation was to focus on the Consortium's capability to obtain a reliable source of LNG supply.

Daewoo Shipbuilding & Marine Engineering Co. Ltd

2.4.6 The key shareholders in this consortium were Daewoo Shipbuilding & Marine Engineering Co. Ltd (DSME) and Korean Southern Power (KOSPO); however, relationships were established with a number of EPC contractors, including Sargas, who was designated as the lead developer in the process. The Consortium proposed a number of alternative generation solutions, including a 218 MWe barge-mounted CCGT plant with an efficiency factor of 51.6 per cent, a 235.8 MWe CCGT plant, or a third alternative using carbon capture technology. In the case of the first option, the Consortium proposed a configuration of three gas turbines and one steam turbine. With respect to LNG storage, the Consortium proposed an FSU permanently moored to the jetty one kilometre from the shore, with an FSRU on the jetty platform. The FSU was expected to be between 271 and 285 metres in length, with a total capacity in the range of 125,000 and 145,000 cubic metres. To be manned, this solution would require a crew of 28. The Consortium

proposed direct LNG supply from providers such as Morgan Stanley, who has a relatively active LNG trading business. In its application, the Consortium envisaged the requirement of between five to eight LNG shipments yearly of around 90,000 to 140,000 cubic metres each.

2.4.7 The Evaluation Committee noted that the proposed solutions were not adequate for local requirements. The barge-mounted solution did not meet the EoIC requirements, while the onshore solution was oversized. Furthermore, the Committee noted that the proposed location of the FSU would result in difficulties for the port and create a greater visual impact on Marsaxlokk Bay. Nonetheless, the Committee noted the Consortium’s strong technical credentials. Various reference projects were provided for the CCGT plants and the LNG infrastructure, including plants and FSRUs of comparable or larger scale. In fact, the Committee noted that the comprehensive proposal submitted by this Consortium was one of the best submissions. In view of the fact that Morgan Stanley was in discussion for the long-term supply of LNG from the United States of America as from 2017, the Committee maintained that more certainty of long-term LNG supply arrangements was necessary.

2.4.8 Stated in the EoIC evaluation report was that, while no financial statements were provided in the submission, extracts were provided evidencing that KOSPO and DSME had equity substantially in excess of €150,000,000 requirement. In addition, Internet searches carried out did not reveal any reason for exclusion. Credit rating extracts revealed the positive credit rating of both companies, KOSPO of A+, while DSME of A1; however, no certificates were provided as proof. The project was to be primarily financed through loans with a gearing ratio of 75 per cent. Notwithstanding this, the credit rating as well as the letter of support from the Korean Exximbank indicated that the Consortium would be in a position to raise the required financing. Noted in the EoIC evaluation report was that the proposed pricing structure was unclear and not quoted on an mmbTU or kWh basis, but as a fixed fee. From the NAO’s review of the submission, it was ascertained that monthly payments were to be based on capacity fees and energy fees. In terms of pricing for the GSA, a fixed rate of €6,548,964 per month was to apply for the first five years of the contract. For the remaining period of the contract, a monthly capacity fee of €513,565.20 was to be factored to an LNG price index and augmented by a monthly energy fee of €1,301,310. In addition, DSME specified an annual minimum take obligation of 6,350,000 mmbTU of natural gas. With respect to pricing for the PPA, a fixed rate of €12.55/MWh was set for the first five years. Pricing for the remaining term of the contract was determined through reference to a monthly capacity fee of €876,917.20 factored to the gas price, and a monthly energy fee of €4,750,848.

2.4.9 Nevertheless, the EoIC Evaluation Committee considered the potential of the Consortium and was of the opinion that it should not be penalised with respect to the proposed technical solution, which was not to form a key part of the evaluation process. Therefore, the Committee recommended the approval of the Consortium to proceed to the RfP stage, possibly providing a different solution to that proposed at EoIC.

Edison S.p.A

- 2.4.10 Edison S.p.A was the sole party to this submission. The EoIC Evaluation Committee noted that while Edison had expressed an interest to participate in the RfP with respect to the power generation plant and the LNG terminal, it failed to provide any solutions in response to the EoIC.
- 2.4.11 In its technical assessment, the EoIC Evaluation Committee maintained that although no technical solution was proposed, Edison demonstrated its capability to deliver a number of alternative solutions through the provision of references for a CCGT plant and an LNG terminal. In its submission, Edison referred to the Edison/ EDF portfolio where access to significant volumes of LNG was possible. The Committee noted that Edison currently supports shipments to Belgium and Italy, and would therefore have sufficient volume to divert to Malta. On the basis of the documentation provided, the Committee was of the understanding that Edison had the capability to develop a technically viable solution for Malta.
- 2.4.12 Audited financial statements for 2012 submitted by Edison presented a clean audit opinion and shareholders' funds well in excess of the stipulated €150,000,000 threshold. In addition, the Standard and Poor's (S&P) credit rating for December 2012 was of BBB/A-2 with a positive outlook. Noted in the Evaluation Report was that Edison's experience in CCGT and LNG provided it with the right experience to finance and manage the whole value chain, including the supply of LNG.
- 2.4.13 Due to its demonstrated credentials and abilities, the Evaluation Committee recommended that Edison proceed to the RfP stage, notwithstanding that no technical solution was submitted. This was subject to Edison providing appropriate details in its bid in response to the RfP.

GMR Energy Ltd

- 2.4.14 GMR Energy Ltd, the sole party to this submission, proposed a technical solution involving a barge-mounted CCGT plant of 220 MW. The plant was to consist of four gas turbines and one steam turbine, with a proposed availability of between 90 to 92 per cent. This would require a barge mooring basin, including a jetty, of 135 metres by 85 metres. No further information was provided in respect of the projected efficiency of the plant. According to GMR Energy, the CCGT plant would be operational within six months, which the EoIC Evaluation Committee understood as implying the utilisation of an existing barge-mounted plant. The GMR Energy submission provided a partial solution since no LNG storage or supply arrangements were proposed.
- 2.4.15 In its technical assessment, the EoIC Evaluation Committee noted that good reference projects, comprising power generation plants, were included as part of this submission. However, the barge-mounted solution proposed did not meet the requirements of the EoIC. Furthermore,

GMR Energy did not have experience in LNG storage and supply, which elements were not being offered as part of the submission.

2.4.16 GMR Energy provided a list of companies from which it was to select its EPC contractors. From a financial perspective, no financial statements were provided; however, equity of €464,000,000 was declared as at 31 December 2012. A bank letter of support from the Industrial Credit and Investment Corporation of India Bank was provided, together with evidence of a credit rating of BBB+ from the Japan Credit Rating Agency, in line with the EoIC requirements. A basic Internet search did not provide any basis for the exclusion of GMR Energy. In terms of cost, the proposed solution was, at €0.16/kWh, deemed expensive by the EoIC Evaluation Committee; however, given the references and financial data provided, the GMR Energy was deemed capable of delivering, managing and operating a CCGT plant, albeit that the LNG terminal was not included in its submission.

2.4.17 The EoIC Evaluation Committee recommended that GMR Energy advance to the RfP stage. However, this was subject to the forming of a consortium with another bidder shortlisted by the Committee offering an LNG solution, and proposing an onshore power solution in its bid to the RfP.

Bumi Armada

2.4.18 Bumi Armada was the sole party to this submission, although it declared that it was in the process of forming a consortium. According to the EoIC evaluation report, Bumi Armada did not provide any details regarding the proposed energy generation solution, yet expressed interest in providing both power and LNG solutions. With regard to LNG storage, Bumi Armada proposed an FSU that was to be permanently moored along the shore or offshore in the vicinity of the Delimara Power Station. The FSU was expected to be an existing reconverted LNG carrier with a maximum capacity of 140,000 cubic metres, although Bumi Armada indicated that this would be determined at the RfP stage. Regasification was to take the form of an intermediate fluid system, a propane compact vaporiser and a printed circuit heat exchanger. In respect of LNG supply, no details were provided in terms of the management of the supply chain; however, it was noted that shipment sizes were to be in the region of 70,000 to 138,000 cubic metres.

2.4.19 References to similar projects undertaken by Bumi Armada were not provided and appropriate partners for LNG supply had not yet been identified. Moreover, the EoIC Evaluation Committee considered that, despite interest shown in offering a complete solution, no technical information was provided. In this context, the Committee was not provided with a reasonable level of comfort required to confirm the overall capability of Bumi Armada to deliver the stipulated requirements.

2.4.20 From the financial data presented in the submission, Bumi Armada was deemed to have an appropriate degree of financial strength, with the declared total equity for 2011 amounting to €9.2 billion. Notwithstanding this, a credit rating report was not provided. The EoIC Evaluation

Committee noted that the literature submitted indicated that Bumi Armada had an international presence in the ownership, lease and operation of Floating Production Storage and Offloading vessels; however, this was not backed by evidence that demonstrated the Company's ability to finance, own and operate an LNG terminal, nor to manage an LNG supply chain. Moreover, no relevant pricing data was disclosed.

- 2.4.21 Based on the above considerations, the EoIC Evaluation Committee did not recommend that Bumi Armada proceed to the RfP stage.

Abener Energia SA

- 2.4.22 The key shareholder in this submission was Abener Energia SA, who was to retain a 30 per cent shareholding. However, at the time of submission, Abener was still in the process of seeking potential partners to form a consortium. Abener proposed a 200 MW CCGT power plant which, together with LNG storage tanks and auxiliaries, would occupy two hectares of land. The EoIC Evaluation Committee noted that Abener made an erroneous assumption that the power plant was to be located adjacent to the LNG plant, which was not the case. The net efficiency of the plant was estimated to be approximately 50.7 per cent, with 98 per cent availability. The submission did not include proposals for the storage and supply of LNG.
- 2.4.23 Reference to two similar CCGT projects were provided by Abener. The EoIC Evaluation Committee considered these references as satisfactory, having demonstrated Abener's credibility and ability to develop a similar solution in Malta. The Committee noted that the applicant proposed Site B as the location for the entire project; however, the Committee was of the understanding that the proposed solution could be located on Site A.
- 2.4.24 The audited financial statements for year 2011 revealed that Abener appeared to be financially stable and sustainable, with shareholder funds exceeding €1 billion. While Abener did not provide credit worthiness reports, it presented bank letters of support from Santander and HSBC banks. An Internet search did not reveal any issues that would preclude Abener from progressing to the RfP stage. Given the strong financial backing, as well as the technical and commercial experience evidenced through the references, the EoIC Evaluation Committee was of the opinion that Abener had the credentials and the right level of finance to competently manage and sustain the CCGT operation. Abener cited the monthly capacity and the energy fees as €3,941,000 and €106,000, respectively. Both fees excluded the price of gas and the Committee noted that it was unclear how this cost was to be charged.
- 2.4.25 The EoIC Evaluation Committee recommended that Abener proceed to the RfP stage, provided that it modified its proposal to locate the CCGT plant on Site A, and collaborated with another endorsed candidate who had offered an LNG solution to complement the proposal.

- 2.4.26 Vitol SA and BW Gas were the key shareholders in this Consortium. The EoIC Evaluation Committee noted that the Consortium did not offer a power generation solution and limited its submission to LNG storage and supply. To this end, the Consortium proposed an FSU with a cumulative capacity of approximately 125,000 cubic metres with onshore regasification. This necessitated the construction and development of a concrete platform and a dolphin at Site B. The conversion of the FSU was to be completed in January 2015, the regasification plant in February 2015, while the start up and commercial operations were to take place during March 2015. The Consortium proposed that the LNG supply be delivered through medium and/or large-scale carriers sourced from a number of jurisdictions and companies.
- 2.4.27 Vitol SA put forward one LNG project as reference. Notwithstanding this, reference was made to a number of oil terminals owned and operated by Vitol SA, which although not sourced by LNG, was considered relevant by the EoIC Evaluation Committee with respect to the management of floating storage terminals. The Committee noted that, on its website, Vitol claimed that it was a major player in the storage and terminal business and that, together with another company, had access to storage capacity of approximately 8,600,000 cubic metres, with plans to increase capacity to over 13,000,000 cubic metres by end 2016. According to the Committee, Vitol strengthened its competence through an alliance with BW Gas, which was one of the world's leading maritime groups in oil tanker and offshore segments. In this regard, the Committee did not have any reason to doubt the Consortium's technical capacity to design, develop, build and operate an LNG Terminal. Moreover, the Committee observed that Vitol demonstrated an important attribute that very few other bidders had, that is, its strength in the LNG trading business and access to LNG. However, more certainty in terms of its long-term supply arrangements was to be sought.
- 2.4.28 Vitol submitted a declaration that it had a credit rating of BBB provided by S&P; however, no credit rating certificate was provided. The EoIC Evaluation Committee also noted that no direct evidence confirming this claim was found online. Moreover, no financial statements were submitted to substantiate the required equity threshold levels outlined in the EoIC. A search on Vitol's website indicated that during 2012, the Company had a total turnover of US \$303 billion suggesting significant financial strength. Nonetheless, only a review of the balance sheet would provide confirmation. According to the Committee, an Internet search on both companies did not reveal any issues that could have precluded the Consortium from proceeding to the RfP stage. The Consortium's strong experience in LNG, coupled with the turnover generated by Vitol, provided the Committee with a significant degree of comfort that the Consortium had the right level of expertise and access to finance and was able to manage the supply and storage of LNG in the process. The total gas price for the first five years was to be determined through the computation of $P = X \cdot B_n + Z$, where B_n was BRICE of the previous month, X was 0.141 and Z was 2.390. This pricing structure corresponded to a total delivery of 17.33 tBTU for Delimara 3 and Delimara 4. No pricing structure was indicated beyond the first five years.

- 2.4.29 The EoIC Evaluation Committee recommended that Vitol proceed to the RFP stage, with the proviso that it collaborated with a shortlisted candidate who had offered a power generation solution.

Endeavor Energy Holdings LLC and BB Energy

- 2.4.30 This consortium comprised Endeavor Energy Holdings LLC and BB Energy, with equity of 70-80 per cent and 20-30 per cent, respectively. Exodus Crossing LLC and Excelerate Energy were designated as the IPP developer in the project. This Consortium proposed a multi-shaft CCGT on Site A, with two class F gas turbines of 75MW power output each and a steam turbine of 80MW power output. Therefore, the plant was expected to have a capacity of 220 MWe at site conditions and operate at an efficiency level of 53 per cent. According to the EoIC Evaluation Committee, the Consortium was not specific with regard to the proposed LNG storage solution; however, indicated its willingness to provide floating and onshore solutions. Irrespective of the solution offered, the Consortium envisaged a requirement of approximately 60,000 cubic metres in storage capacity. The Committee considered the information provided on the LNG solution as scant and more details would be required to determine the feasibility of the proposed solution. The Consortium indicated that the LNG supply strategy was to be determined at the RfP Stage. However, the submission included M&M (Greece) or Sonatrach as potential sources of supply, while other small-scale LNG transport solutions were also being considered.

- 2.4.31 The Endeavor Energy Holdings LLC and BB Energy Consortium provided a number of references for power generation solutions. Notwithstanding this, the EoIC Evaluation Committee noted that this experience was gained by staff members while working for other companies. Various references were provided for LNG offshore solutions, yet these were largely delivered by Excelerate Energy, which was listed as an IPP developer and did not form part of the shareholding of the Consortium. In this context, such references were to be deemed acceptable by the Committee only if Excelerate Energy was nominated as the IPP developer for the LNG solution. Research on the companies revealed that Endeavor Energy Holdings LLC was owned by DCM Capital and Exodus Crossing LLC, a private equity firm and a transaction advisory firm in the field of energy, respectively. Individually, neither member of the Consortium had the necessary capability to develop, own and operate the proposed technical solution; however, the partnership of Endeavor Energy Holdings LLC with BB Energy ensured appropriate access to a leading partner in the gas trading business.

- 2.4.32 The EoIC Evaluation Committee was unsure of the qualifications of this Consortium and a number of clarifications were raised. Specific reference was made to the cited direct power project experience, which could only be traced to specific senior management personnel rather than to the actual Consortium. According to the Committee, the Consortium proposed a conventional CCGT solution on Site A but was less specific on the LNG plant. The major technical attractiveness of this Consortium was the use of Excelerate Energy as a key player in the development of the LNG solution, as it was one of the very few players in the LNG market who directly provided LNG offshore solutions.

- 2.4.33 Endeavor Energy Holdings LLC reported funds in excess of US \$7.3 billion. However, only financial statements for 2012 corresponding to its parent entity were provided, with total assets amounting to US\$968,000,000. Although no credit rating certificate was provided, the Consortium submitted a letter of support issued by Citibank. An Internet search did not reveal any issues that could have precluded the Consortium from participating in the RfP. While the EoIC Evaluation Committee was confident that the Consortium was capable of financing the business, the Committee was unsure of its capability to manage the CCGT element and the LNG storage and supply chain. This was highly contingent on the role played by Excelerate Energy at the RfP stage. The Committee noted that no pricing data was provided.
- 2.4.34 Cited in the EoIC evaluation report was that the Committee was not in agreement on the suitability of the Consortium; however, the Committee recommended the progression of the Consortium to the RfP stage after the casting vote of the Chair EoIC Evaluation Committee.

Yildirim Energy Investments INC

- 2.4.35 Yildirim Energy Investments INC was the sole party in this submission, with Tecnicas Reunidas proposed as the IPP developer. Yildirim proposed to build, develop and operate a CCGT plant with a capacity of 232 MW and an efficiency factor of 55.4 per cent. The CCGT plant was to consist of two gas turbine generators, two heat recovery steam generators and one steam turbine generator in a multi-shaft configuration. Yildirim proposed to locate the plant on Site B, utilising Site A for storage and lay down facilities. Yildirim claimed that it was in a position to complete the project within 18 months from contract signature. With regard to the LNG storage solution, Yildirim proposed the set up of an onshore LNG plant, which would require the construction of a jetty and the modification of the existing cooling water intake. However, Yildirim did not provide details on the actual specifications or timeframes. Furthermore, no significant details were provided with respect to the proposed LNG supply, except for a note from a Swiss trader indicating willingness to supply LNG at the price of US \$14/mmBTU.
- 2.4.36 In its technical evaluation, the EoIC Evaluation Committee noted that Yildirim had presented a large portfolio of references on the construction and development of CCGT plants. Moreover, Yildirim proposed to team up with Tecnicas Reunidas and Initec, both of whom had multiple references relating to onshore LNG terminals. However, the Committee was of the opinion that Yildirim's capability to source LNG supply was doubtful and weak, and therefore the Consortium was to respond in more concrete terms at RfP stage. Moreover, a key issue identified by the Committee was the 18-month timeframe for completion of the LNG storage facility, which was likely to be exceeded in case of an onshore terminal. On the other hand, the Consortium committed to the 18-month timeframe for the completion of the CCGT plant. In this context, the Committee was of the understanding that the Consortium was to reconsider its proposal should it proceed to the RfP stage and offer an offshore solution, more compatible with the timeframes and deadlines of the project.

- 2.4.37 Yildirim provided the financial statements for 2011, which indicated equity amounting to US \$492,000,000. However, the auditor's report was qualified due to the fact that the opening value of inventory could not be readily ascertained. According to the submission by Yildirim, it was rated as AAA by Turkish banks, although this was not appropriately substantiated. An Internet search did not return any evidence that was to preclude Yildirim from proceeding to the RfP stage. Nevertheless, the EoIC Evaluation Committee was unsure of the Consortium's capability to finance and manage the solution offered. Specifically cited in this respect was that the Consortium did not appear to have previously managed an integrated project of this type. The Consortium quoted a capacity fee for gas of €3.22-3.55/mmBTU and an energy fee of €12.25-12.50/mmBTU. In the case of power, the Consortium quoted a capacity fee of €7-12/MWh and an energy fee of €69-74/MWh. The latter excluded the price of gas.
- 2.4.38 Despite the EoIC Evaluation Committee's reservations on the capability of Yildirim to deliver the full business model, it was agreed that the Consortium be allowed to participate in the RfP process, during which a more rigorous approach was to be applied.

Energy World International Ltd

- 2.4.39 This consortium, comprised of Energy World International Ltd (EWI), Slipform Engineering International Ltd, Consolidated Electric Power Asia Ltd (CEPA) and Energy World Corporation Ltd, proposed three different CCGT options. These were a combined cycle with three gas and one steam turbines with an output of 213.15 MW, a combined cycle with one gas and one steam turbine with an output of 225MW, and a combined cycle with two gas and one steam turbine with an output of 232MW. The Consortium estimated it would require a total footprint of approximately 2.2 hectares and would therefore need to locate the proposed CCGT plant and LNG terminal infrastructure on Site B. The net efficiencies of the options ranged between 52.4 per cent and 55.7 per cent. EWI were to engage their sister company, CEPA to operate the power plant under a long-term O&M agreement to ensure the efficient operation of the plant. The Consortium proposed an onshore LNG storage solution with a jetty and a loading facility to be extended outside of the coastline. The storage facility was expected to have a total capacity of 50,000 cubic metres. It was envisaged that LNG would be sourced through nine shipments a year, from Sengkang Gas Fields, with shipment sizes expected to be in the region of 25,000 tonnes each.
- 2.4.40 Energy World provided a number of references for the power and LNG plants. A closer evaluation of the references by the EoIC Evaluation Committee revealed that in the case of the power generating plant, these were solutions of 8.68MW and 135MW, both smaller than that required by Enemalta. The Consortium also made reference to these project with respect to the LNG plant. Again, the Committee noted that the plant quoted was smaller than the minimum required in the EoIC. LNG was to be sourced from the Consortium's own facilities in Indonesia or somewhere closer, where the installation of a modular liquefier was proposed. However, this was not available at the time of submission.

2.4.41 The financial statements of Energy World Corporation for 2012 showed equity of approximately €428,000,000. Although the auditors provided a clean report and Energy World Corporation submitted a confirmation certificate that there were no facts or circumstances that would materially affect cash flow from operations, a credit rating certificate was not presented. A number of projects undertaken during 2011 were referenced; however, no bank letter of support was provided. Energy World claimed ownership in a number of gas fields, yet this could not be verified. According to the proposal, 70 per cent of the project was to be financed through loans, with the remaining funds provided directly by the Consortium. The indicative pricing for power proposed by the Consortium was €0.40/MWh in capacity fees and €0.62/MWh in energy fees. In the case of LNG supply, the indicative pricing was of €75/tonne in capacity fees and €385/tonne in energy fees.

2.4.42 The EoIC Evaluation Committee concluded that the Consortium did not have the required credentials to design, build, own and operate the facilities necessary to supply Enemalta with power and gas, since its experience was largely oriented towards smaller scale solutions. On this basis, the Committee recommended that Energy World not be allowed to proceed to the RfP stage.

Soffimat-Gestamp

2.4.43 The key shareholders of this consortium were Soffimat, Site Technology, Gestamp and SENER, each with a 25 per cent shareholding. The Consortium proposed a CCGT plant consisting of one block with a nominal capacity of 200MW at site conditions, consisting of a gas turbine and generator, a steam turbine and generator, a heat recovery steam generator and all required auxiliaries. The plant was to operate on the specified natural gas. The proposed solution was to be completed over a period of three years; however, the area where the CCGT plant was to be located was not defined.

2.4.44 Soffimat-Gestamp provided two alternative LNG storage solutions, either an offshore FSRU or an FSRU that was to be located close to shore with a jetty. The capacity of the FSRU was expected to be between 163,000 and 182,000 cubic metres. The FSRU was to have a dedicated process deck with space for operation and future regasification expansion. The EoIC Evaluation Committee considered the proposed LNG solution as distorted, seemingly extracted from another proposal. With regard to LNG supply, the Consortium proposed to source LNG from various countries. To this end, Vitol provided a letter of support indicating its willingness to provide the Consortium with LNG. The Committee noted that Vitol had submitted its own proposal in response to the EoIC.

2.4.45 The Consortium indicated Sagunto LNG Terminal as a key reference. The plant had an initial annual capacity of 6.8 billion cubic metres, which facility comprised infrastructure required for the unloading, storage and regasification of LNG, and consignment of natural gas to the network, as well as a tanker truck loading facility. In terms of power generation, the Consortium made reference to the San Marino CCGT as a case study; however, no specific details on this

project were provided. The CCGT solution offered by the Consortium seemed to fit Enemalta's requirements, although details of the site on which the plant was to be located were lacking. According to the EoIC Evaluation Committee, a number of other references provided were irrelevant to this process and seemed to relate to another submission.

- 2.4.46 Of the four members of the Consortium, only SENER provided financial statements in the submission. Gestamp indicated equity of €304,000,000; however, the financial statements supporting such claims were not audited. No financial statements for the other members were submitted. In addition, no bank letters of support and credit ratings were provided. An Internet search did not reveal any factors that could have prohibited the Consortium from proceeding to the RfP stage. The indicative pricing information provided stipulated that in the case of gas, capacity fees were to be charged at €28.95/MWh HHV and energy fees at €44.5/MWh HHV. For power, capacity fees were to be charged at €22/MWh and energy fees at €103/MWh.
- 2.4.47 The EoIC Evaluation Committee was of the opinion that Soffimat-Gestamp might be able to manage the overall business model since it had provided the right references. Notwithstanding this, the Committee noted that the quality of the submission by the Consortium was quite poor. While the Consortium was deemed capable of financing the project through its business partners, the Committee maintained that more concrete evidence was to be provided at the RfP stage. In this context, the Committee recommended that Soffimat-Gestamp be allowed to proceed to the RfP.

Med-Gas AS

- 2.4.48 Med-Gas AS was the sole party in this submission and offered a 220 MW Wartsila engine power plant requiring an area of 2.2 hectares. The EoIC Evaluation Committee did not consider the proposal in line with that requested in the EoIC. Med-Gas did not indicate a location for the operation but the Committee presumed that Site B was being opted for due to the large area required. The type of technology to be used was also not indicated; however, the Committee noted that Wartsila engines are typically reciprocating engines, which are usually less efficient than a CCGT. In fact, Med-Gas quoted an efficiency rating of 49.5 per cent, which was lower than the efficiency of other solutions proposed. In addition, Med-Gas proposed to develop an onshore LNG storage solution, with a total capacity of 30,000 cubic metres. This facility was to include a truck loading facility for the inland market. The estimated completion time of the project was 20 months from contract signature. LNG was to be supplied through weekly shipments with a capacity of approximately 15,000 cubic metres per shipment. Nonetheless, the Committee remarked that an LNG sourcing strategy was yet to be developed and that no initial arrangements were cited.
- 2.4.49 Med-Gas cited the Antelope Wartsila Power Station as one of their key references with respect to power generation. The EoIC Evaluation Committee noted that Wartsila was not a shareholder of the Consortium and that the referred project was marginally smaller than that stipulated in the EoIC. With respect to LNG storage, reference was made to the design, building

and operation of various onshore tanks; however, the role played by Med-Gas in these projects was unclear. Although the Committee considered the proposal of building a 30,000 cubic metre onshore tank supported by more frequent shipments attractive, the Committee was unsure whether Med-Gas had the required credentials to undertake the project within the stipulated timeframe.

2.4.50 Med-Gas did not provide any financial or commercial information, necessary for the EoIC Evaluation Committee to appropriately assess financial creditworthiness and the Company's ability to raise finance. The Committee considered the proposed financing structure unclear, although the possibility of introducing other partners was detailed in the proposal. An Internet search did not reveal any issues that would have effectively precluded Med-Gas from proceeding to the next phase in the selection process. The Committee noted that no information relating to Med-Gas could be found online. From a pricing perspective, Med-Gas proposed a total charge of €86.42/MWh in the case of natural gas and €116.87/MWh in the case of power.

2.4.51 In light of concerns raised, the EoIC Evaluation Committee recommended that Med-Gas was not to proceed to the RfP stage.

GasFin Developments SA

2.4.52 GasFin Developments, the sole party to this submission, did not offer any power generation solution. With regard to LNG storage, GasFin proposed a mid-scale floating storage solution on a non-propelled barge with a flat deck moored to a jetty with a total capacity of 50,000 cubic metres. The project was expected to take six months, for engineering and permitting submissions and a further two years for building, constructing and commissioning. However, alternative options were considered, albeit not defined, to accelerate the timetable. The LNG storage facility was expected to remain available 97 per cent of the time. With reference to LNG supply, GasFin proposed the adoption of a partial discharging system or the building of a new 20,000 cubic metre vessel. Further details in this regard were not provided.

2.4.53 In its technical evaluation, the EoIC Evaluation Committee noted that GasFin's website made reference to the Company's provision of an LNG delivery service on a long-term fixed price basis utilising custom-built LNG infrastructures. GasFin provided no direct references, other than claims to MoUs and agreements for which no evidence was presented. Certain references for LNG storage were provided; however, on closer evaluation by the Committee, it resulted that the role of GasFin was limited to that of an EPC contractor, in either full or partial capacity. Relevant references were provided by TGE Gas Engineering, yet no letter of commitment to the project was submitted. Moreover, the Committee observed that the proposed solution exceeded the timescales originally contemplated in the EoIC.

2.4.54 The EoIC Evaluation Committee could not ascertain GasFin's financial strength and its capability to finance the project as no financial statements or other required information were provided. GasFin also failed to submit evidence of creditworthiness, such as a credit rating or a bank

letter of support. Moreover, no publicly available information was traced by the Committee in its efforts to establish the level of equity held by GasFin. A statement confirming that total shareholders' funds amounted to at least €150,000,000 was not made available. GasFin claimed that, if selected, it would only engage with potential LNG suppliers in the region, and was willing to build a new vessel should Enemalta secure LNG supply on an FOB basis. No relevant pricing for any element of GasFin's solution was provided.

- 2.4.55 The EoIC Evaluation Committee concluded that while the proposal of developing a mid-scale LNG solution was of interest, GasFin failed to provide sufficient evidence to substantiate its capability of financing and delivering the proposed solution, including the LNG supply chain. In support of its decision, the Committee cited the lack of appropriate references notwithstanding the Company's online claims to the contrary. On this basis, the Committee recommended that GasFin not be allowed to proceed to the next stage of the process.

China Power Engineering Consulting Group Corporation

- 2.4.56 China Power Engineering Consulting Group Corporation (CPECC) was the sole party in this submission. With regard to the power generation solution, CPECC proposed a gas-steam combined cycle generating unit, consisting of a gas turbine generator unit, a heat recovery steam generator and a steam turbine generator unit. The total output generated from this plant would amount to 216 MW, with an efficiency rate of 50 per cent. The total footprint of the plant was expected to be in the region of 0.78 hectares, therefore allowing for location on either Site A or Site B. Nevertheless, Site B was suggested as the better option since it could accommodate the generation plant, the LNG plant, as well as all supporting components. The total construction period was set at 18 months. CPECC did not offer LNG storage and supply solutions.
- 2.4.57 The EoIC Evaluation Committee noted that CPECC offered an older class, low efficiency CCGT solution. CPECC provided a list of references of power plant projects in which it had been involved. However, closer analysis of these projects by the Committee revealed that, in most cases, CPECC had acted as the design and engineering company and not the actual contractor and/or operator of the plants. Also provided by CPECC were references wherein it acted as a full or partial EPC Contractor. In view of the ambiguity of the response, the Committee issued a request for clarifications whereby CPECC was to provide more details on the projects it was actively involved in. Following this request, CPECC provided additional details in which it claimed to have developed, built and operated a range of power plants.
- 2.4.58 Based on the latest financial statements, CPECC held equity of €655,000,000 in 2011 and its auditors issued an unqualified opinion. A credit rating report was not provided, yet CPECC's financing capability was rendered evident by a letter of support in excess of €390,000,000 provided by the Chinese Bank of Communications. Research undertaken with respect to the Bank by the EoIC Evaluation Committee revealed that it had a credit rating of BBB+, which was in line with the requirements of the EoIC. An Internet search did not reveal any issues that

would preclude CPECC from participating in the RfP. In fact, CPECC submitted a number of statements declaring that it was not subject to the exclusion criteria outlined in the EoIC. The Committee did not agree on the overall capability of CPECC to finance, own and manage the power generation element of the project in accordance with the EoIC requirements.

- 2.4.59 The EoIC Evaluation Committee was divided on whether to recommend CPECC to progress to the RfP stage, or otherwise. A vote was taken wherein the majority established that CPECC was to advance to the RfP stage subject to it teaming up with companies like Vitol or Shell.

Independent Power Corporation PLC

- 2.4.60 Independent Power Corporation plc was the only party to this submission and offered an open cycle gas turbine with an installed capacity of 192MW and a net capacity of 183.64MW. The solution was expected to yield an efficiency rate of 42 per cent. The gas turbine and generator lube oil systems each were to have an independent fin-fan cooling system, therefore no secondary cooling system was required. However, injection water was to serve the purpose of reducing emissions and boosting performance. The proposed turbine was to utilise an annular combustor system modified to operate on liquid and gas fuel. In its review, the EoIC Evaluation Committee stated that this technology was not as requested in the EoIC. Solutions for LNG storage or supply were not offered by Independent Power.
- 2.4.61 Independent Power provided a number of references in its proposals in which it had developed, owned and/or operated power plants. Notwithstanding this, it transpired that most of the references provided were either acquisitions, and hence no development and building experience was gained, or small developments not exceeding 90MW. One exception was the Pawnee Project, which Independent Power claimed to have a capacity of 220MW. Another reference, namely the Libertador Project, comprised a CCGT plant with a capacity of 800MW. However, this plant was still not in operation at the time of submission.
- 2.4.62 In its submission, Independent Power confirmed that the proposed equity providers had aggregate shareholders' funds of at least €150,000,000. However, this was not supported by evidence since no financial statements, credit ratings or bank letters of support were provided. Independent Power cited Meridian Capital as the entity that was to raise finance, indicating that it had secured financing of more than €3 billion in the four years prior to the submission. Again, no proof was presented confirming the relationship with Meridian Capital. Indicative pricing information was provided in the submission, which consisted of capacity fees of €2,400,000 monthly, plus an additional undefined amount, and monthly energy fees of €214,500 and €10,500,000.
- 2.4.63 In the absence of appropriate project references and lack of evidence of financial capability, the EoIC Evaluation Committee concluded that Independent Power did not have the appropriate proven abilities to own, finance and manage the proposed solution. In this context, the Committee did not recommend Independent Power to proceed to the RfP stage.

Mag Air Energy LLC

- 2.4.64 Mag Air Energy LLC was the sole party to this submission. The submission by Mag Air confounded the EoIC Evaluation Committee, for at one point, the proposal entailed the construction of a 200MW power station with a minimum 10 per cent overcapacity with the option of a further increase of 20 per cent in supply. The Committee was of the understanding that this 20 per cent provision was erroneously attributed to the power generation facility, when this in fact was a gas supply requirement. However, at another point in its submission, Mag Air implied that it was to complete an interconnector to Sicily. No information was provided with regard to LNG storage or supply solutions.
- 2.4.65 Mag Air provided a few unrelated references to the EoIC. The closest reference, which was nonetheless deemed unrelated by the EoIC Evaluation Committee, referred to a PPA with Crell Power Company, which was yet to materialise. No financial and creditworthiness information was provided. Internet searches by the Committee proved inconclusive as no information could be traced. Commercial material provided was also deemed irrelevant to the EoIC. None of the data was reliable as it was based on a prototype and unproven technology unrelated to gas combustion.
- 2.4.66 In view of the ambiguous information provided by Mag Air and the lack of background data provided on its technical, commercial and financial credibility in the market, the EoIC Evaluation Committee recommended that Mag Air not be allowed to proceed to the RfP stage.

DEVCO International LLC

- 2.4.67 The key shareholders in this consortium were Venture Power Partners, which was a subsidiary of Walters Power International, DEVCO International LLC and ESA Development (Global Energy Ltd). Devco International offered a number of options that included various combinations of gas turbines from different manufacturers coupled with heat recovery steam generators and stream turbine generators. The technology offered consisted of CCGT. The EoIC Evaluation Committee noted that no other information was readily available in this respect. DEVCO International proposed a number of alternative LNG storage solutions. One of the options included an FSRU consisting of an existing LNG transport ship outfitted with an LNG regasification unit. The FSRU was to be permanently moored to a jetty constructed for this purpose. Another proposal entailed the utilisation of floating modular units for LNG receiving, storage and regasification with a gas pipeline to convey fuel to Enemalta's plant and the newly constructed CCGT plant. The delivery time for this solution was 33 months. A variant of both options was also put forward. The Committee noted that DEVCO International provided no references with respect to the sourcing of LNG or cited any actual experience in terms of LNG projects.
- 2.4.68 The proposal submitted by DEVCO International indicated that one of its partners, namely Walters Power International, had experience in the development of power plants with output in excess of 800MW over a 20 year period. The EoIC Evaluation Committee inferred that

the Company was primarily involved in the development of small scale power solutions and therefore not comparable to the project under consideration. This was confirmed through the references provided by DEVCO International, which were either still not operational or too small to be accepted as references. Furthermore, reference was made to Gravifloat as a potential supplier in terms of the LNG solution, a company involved in the development of LNG terminal modules for installation in depths of 5 to 25 metres, with storage capacities between 3,000 to 80,000 cubic metres. The Committee noted that no actual projects were cited in this submission. Finally, Global Energy Ltd quoted a number of LNG projects; however, none of the projects cited had been concluded or were in operation.

2.4.69 The EoIC Evaluation Committee considered the information submitted as insufficient to ascertain the level of creditworthiness of the Consortium. No financial statements were provided and these could not be sourced from publicly available information. However, a letter of support was provided by JP Morgan Chase Bank, wherein it was stated that the Bank would support DEVCO International LLC on this project. Similarly, a letter of support was provided by REM Capital Management indicating support to Global Energy Ltd. Bawag Malta Bank Ltd committed to supporting the local entity that was to be set up for this project.

2.4.70 In the absence of the required experience and adequate references, the EoIC Evaluation Committee concluded that the Consortium did not have the necessary credibility to develop, own and manage the operations associated with this project, despite that an element of assurance had been provided with regard to financing through the letters of support. On this basis, the Committee recommended that DEVCO International not proceed to the RfP stage.

Shell Gas and Power Developments B.V.

2.4.71 The key shareholders of this consortium were Shell Gas and Power Developments. The EoIC Evaluation Committee noted that the Consortium did not offer a power generation solution, yet expressed interest in providing an LNG storage and supply solution. However, Shell Gas and Power Developments did not provide any details in this respect. Notwithstanding this, the Committee considered that Shell was one of the leading players in the global LNG market and had a diverse, large and growing portfolio. Shell cited a number of references including the first delivery of LNG to China through the North West Shelf Venture and the conclusion of a sales and purchase agreement to supply LNG to the Dubai Supply Authority in the United Arab Emirates. In addition, Shell made reference to a project inaugurated in Sakhalin on the East Coast of Russia, operating in environmentally challenging conditions. Numerous other examples of LNG projects were quoted, leaving the Committee with no doubt of Shell's capability to deliver on the LNG storage and supply aspects of the project.

2.4.72 In its evaluation, the EoIC Evaluation Committee indicated that no financial data had been provided as part of the submission by Shell. However, a review of published information revealed that Shell had equity in excess of US \$188.5 billion. Given Shell's significant equity holdings and

vast experience in the LNG market, the Committee had no doubt on the Company’s capability to manage and finance the project.

2.4.73 On this basis, the EoIC Evaluation Committee recommended that Shell Gas and Power Development proceed to the RfP stage. However, the Committee indicated that, in response to the RfP, Shell Gas and Power Development were to extend their bid to include both gas and power supplies, either alone or in partnership.

2.5 Conclusion of the EoIC Evaluation Process

2.5.1 Following the analysis undertaken by the EoIC Evaluation Committee, 11 submissions were recommended to proceed to the RfP stage (Figure 7 refers). While bids by the ElectroGas Consortium, DSME, Edison S.p.A, Endeavor Energy Holdings LLC and BB Energy, Yildirim Energy Investments INC and Soffimat-Gestamp qualified in terms of both the power generation and gas supply requirements, the remaining successful bidders fulfilled only one aspect through the partial solution put forward. GMR Energy Ltd, Abener Energia SA and CPECC were recommended to proceed to the RfP stage on the basis of their power generation proposal, while Vitol SA and Shell Gas and Power Developments B.V. in terms of their gas supply proposal. However, the Committee noted that, to be eligible at the RfP stage, bidders who had submitted a partial solution were to partner up with a successful bidder, endorsed by the Committee with respect to a complementary partial solution. Alternatively, successful bidders were to propose a new LNG or power generation partner, complementary to their bid, for approval by Enemalta.

Figure 7: List of successful bidders at EoIC stage

Successful bidders for Power Generation and Gas Supply	Successful bidders for Power Generation	Successful bidders for Gas Supply
ElectroGas Consortium	GMR Energy Ltd	Vitol SA
DSME	Abener Energia SA	Shell Gas & Power Developments B.V.
Edison	CPECC	
Endeavor Energy Holdings LLC & BB Energy		
Yildirim Energy Investments INC		
Soffimat-Gestamp		

2.5.2 The report by the EoIC Evaluation Committee was finalised on 1 June 2013 and was submitted to the Chair Programme Review Board on the same date. The NAO ascertained that, despite the fact that several meetings of the Board had been convened in the interim, it was only on 17 July 2013 that the matter was brought to its attention. The minutes of the meeting held on 17 July 2013 do not provide any detail as to that discussed except “Completed EoIC. This was issued on the 11 April 2013. Eighteen bids had been received, 11 of which were shortlisted. The appeals regulations were enacted and one appeal was received. This was turned down and the decision of the evaluation committee was confirmed”. Although referral to the Board was possibly delayed until the outcome of the appeals process was ascertained, it was noted that the decision of the Appeals Board was made on 25 June 2013. The NAO noted that two other meetings had been held by the Board post the outcome of the appeals process, that is, those

held on 28 June 2013 and 10 July 2013, wherein no reference was made to the outcome of the EoIC. Furthermore, by the time the Programme Review Board endorsed that proposed by the EoIC Evaluation Committee, candidates had already been informed of the EoIC adjudication and the RfP issued.

2.5.3 Candidates were informed of the decision by the EoIC Evaluation Committee through correspondence dated 3 June 2013, copies of which were provided to the NAO. In the correspondence, the selected candidates who had submitted proposals for power generation and gas supply were informed of their shortlisting by Enemalta. To this end, candidates were to be formally invited to submit detailed proposals in accordance with the requirements of an RfP that was to be published shortly thereafter. Candidates were informed that this was without prejudice to Enemalta’s right to require submissions that were not based on the solution originally proposed in the EoIC. A list of the successful candidates, including those that had submitted partial solutions, was included in the correspondence by Enemalta.

2.5.4 Selected candidates who had submitted partial solutions were notified that Enemalta intended to enter into a PPA and a GSA with a single candidate who could provide a complete solution. To this end, candidates who had submitted partial solutions were to consider either forming a joint consortium with other selected candidates, or alternatively introduce new consortium members with the required expertise, subject to Enemalta’s approval. In addition, the candidate was to remain the lead member of the consortium. Documentation reviewed by the NAO indicated the consent of various candidates for Enemalta to disclose their details to other successful candidates who had submitted a partial solution and action taken in this regard. Four candidates, specifically Vitol SA, GMR Energy Ltd, Abener Energia SA and Shell Gas and Power Developments B.V. provided Enemalta with such consent on 6 June 2013, 7 June 2013, 7 June 2013 and 14 June 2013, respectively. The details of these four candidates were distributed by Enemalta among these candidates on 19 June 2013.

2.5.5 Unsuccessful candidates were informed that their proposal did not meet the EoIC requirements and were provided with a short description outlining the shortcomings of their submission. In addition, unsuccessful candidates were informed of their right to file an appeal in line with the provisions stipulated in the EoIC and legislation that was to be shortly enacted. In fact, Legal Notice 155 of 2013, titled ‘Procurement (Energy and Fuels) Appeals Board Regulations’ came into effect on 6 June 2013.

2.5.6 Enemalta informed all candidates that the aforementioned legislation had been enacted and that it was submitting to the jurisdiction of the Procurement (Energy and Fuels) Appeals Board in relation to the EoIC. Any candidate who was aggrieved by a decision of Enemalta to disqualify and/or exclude the candidate from the said procurement procedure, could file a complaint with the said Board. A deposit of €58,000 was to be made with each complaint filed. Complaints were to be lodged within six working days from 6 June 2013.

Appeal by Energy World International Ltd

- 2.5.7 On 13 June 2013, Energy World International Ltd submitted correspondence to the Secretary Procurement (Energy and Fuels) Appeals Board, referring to previous correspondence exchanged with Enemalta and formalising the appeal against the decision not to place its proposal among those shortlisted for progression to the RfP stage. The basis of exclusion cited by Enemalta related to the failure of Energy World to meet the minimum requirements in terms of experience as lead developer for at least two independent energy projects, using the technology proposed in the submission, each with a total sent out capacity of 150MWe or more. Energy World countered the basis of their exclusion through referral to documentation presented with their EoIC submission, specifically citing various projects where this requirement was met. Attached to this correspondence was a deposit of €58,000, subject to refund on termination of the proceedings.
- 2.5.8 The Procurement (Energy and Fuels) Appeals Board, composed of a Chair and two members, presented its report on 25 June 2013. Three sittings were held between 18 and 20 June 2013. The Appeals Board considered the exchanges between Enemalta and Energy World leading to the appeal and submissions made to the Appeals Board by the parties. Energy World and Enemalta were assisted by their legal representatives in testimony given to the Appeals Board. The Chair and a member of the EoIC Evaluation Committee appeared on behalf of Enemalta, while Energy World was represented by its Managing Director and a local agent. The NAO reviewed the report drawn up by the Appeals Board and verbatim transcripts of the testimony given.
- 2.5.9 In essence, the Appeals Board was of the understanding that the submission by Energy World, by itself, did not suffice to overturn the conclusion reached by the EoIC Evaluation Committee. The Appeals Board referred to the fact that the standards of experience requested, and hence to be applied to all submissions, were specified in the EoIC. Irrespective of the extensive experience in the energy and project management sectors, this did not necessarily suffice for the purposes of the EoIC, which posited particular minimum thresholds of experience consisting of:
- a. two independent energy projects using the technology proposed in the submission; and
 - b. each having a total sent out capacity of at least 150MWe.
- 2.5.10 With regard to the first requirement, the Appeals Board noted that Sengkang Power Plant Block 1 and Sengkang Power Plant Block 2, presented as two distinct projects by Energy World, could only be considered as a single energy project for the purposes of the EoIC. The Appeals Board further contended that even if the two Sengkang power plant blocks were to be considered as two independent energy projects, it was unclear whether the minimum sent out capacity threshold would be met. Moreover, the Appeals Board considered the contradictory information regarding the sent out capacity as a “blatant lack of clarity on the part of the appealing company”, which could only serve to render its submission doubtful at best.

- 2.5.11** In addition, the Appeals Board dismissed claims by Energy World that the EoIC Evaluation Committee should have used its discretion to seek clarification in line with the EoIC. The Appeals Board noted that the Energy World's obligation to be clear and precise in its submission could not be substituted by an obligation on the part of the Committee to seek specific clarification. Moreover, the Appeals Board maintained that any further clarification sought would not have changed the outcome of the evaluation. Furthermore, the Appeals Board contended that, had the Committee ignored any or all of the requirements in connection with the submission by Energy World, "it would have distorted competition for candidates whose submissions do comply".
- 2.5.12** In sum, the Appeals Board found against Energy World as it had failed to satisfy the requirements of the EoIC and confirmed the decision taken by Enemalta to exclude the Company in the shortlisting of candidates eligible to progress to the RfP stage. Given that the appeal was deemed unjustified and unfounded in fact and in law, the Appeals Board ordered the forfeiture of the deposit paid.
- 2.5.13** In the review of the transcribed proceedings, the NAO's attention was drawn to statements made by the Managing Director Energy World regarding proposals that the Company had put forward prior to the EoIC. Specific reference was made to a proposal made to Enemalta in 2005 or 2006, on the initiative of Energy World, for a CCGT plant using LNG. However, the Managing Director Energy World indicated that this proposal was discarded when, in 2007, Enemalta opted for plant operating on heavy fuel oil. Subsequently, the Managing Director Energy World claimed that he was approached by the Hon. Dr Joseph Muscat, then Leader of the Opposition, with regard to the proposal made to Enemalta. The Managing Director Energy World affirmed that in 2011, a confidentiality agreement was entered into whereby Energy World was to assist in a non-public capacity with the proposal to develop plant operating on LNG that would allow for the price of power to be reduced by 25 to 30 per cent. The NAO understood this assertion as referring to a confidentiality agreement between Energy World and the then Opposition. In its report, the Appeals Board discarded this claim as it was deemed unfounded in fact and law, and any expectations that Energy World might have had did not automatically translate in a legal entitlement to be shortlisted.

2.6 Analysis of the EoIC Evaluation Process

- 2.6.1** The NAO reviewed all submissions received in reply to the EoIC and carried out an evaluation thereof utilising the parameters established by the EoIC Evaluation Committee. In essence, the evaluation was based on administrative compliance, exclusion criteria, technical experience and reputation, and commercial experience and robustness. In its review, the NAO also made reference to the working papers of the EoIC.
- 2.6.2** Stated in the EoIC was that administrative conformity was essential in verifying whether submissions satisfied all the conditions, procedures and specifications stipulated therein, without substantial departures therefrom or restrictions thereto. Substantial departures or

restrictions were defined as those that affected the scope, quality or execution of the project, differed widely from the objectives, limited the rights of Enemalta or the candidate's obligations under the contract, or distorted competition among other candidates. Importantly, the EoIC specified that if a submission did not comply with the mandatory requirements of the call, it would not be considered any further.

2.6.3 The NAO noted the stark contrast between this and the stance adopted by the EoIC Evaluation Committee with regard to administrative compliance. In its evaluation report, the Committee erroneously remarked that the EoIC did not specify that candidates not compliant with the EoIC reporting requirements would be disqualified from the process. Although the Committee acknowledged that none of the submissions were fully compliant, it adopted a more lenient approach and sought to mitigate shortcomings in the submissions through the information provided therein, publicly available information and requests for clarifications. The NAO sought to determine whether the leniency in approach was uniformly adopted with respect to all submissions. Analysis of the evaluation process resulted in concerns relating to the uniformity of approach and the extent of leniency applied. While the NAO acknowledges that certain infringements were minor, others were substantial, constituting evident departures from the provisions stipulated in the EoIC with respect to administrative compliance.

2.6.4 For submissions to be considered administratively compliant, candidates were to submit evidence of experience and capability, as well as the ability to source appropriate finance and demonstrate a degree of credit worthiness. The NAO noted that in the case of Vitol SA, Shell Gas & Power Developments B.V., Med-Gas AS and GasFin Developments SA, the candidates failed to provide either all or elements of these non-elective requirements. In the case of Vitol SA, evidence was submitted of only one project involving the operation of an LNG terminal. Moreover, Vitol SA failed to provide proof of its financial resources, submitting solely a declaration as to its BBB credit rating. While Shell Gas & Power Developments B.V. indicated interest in providing LNG storage and supplies, it did not disclose any details as to how these were to be provided; neither was any financial data provided in its submission. Despite these significant lacunae, the EoIC Evaluation Committee recommended Vitol SA and Shell Gas & Power Developments B.V. to proceed to the RfP. In its proposal, Med-Gas AS cited only one power station as a key reference for its proposed generation solution, which was also marginally smaller than specified in the EoIC. Moreover, Med-Gas AS did not provide the requisite financial information that would enable an appropriate assessment of its financial resources. With regard to GasFin Developments SA, it failed to provide sufficient evidence with regard to its proposed solution, including the LNG supply chain. Evidence of its financial strength and credit worthiness was also not provided. On these grounds, and in contrast to its decision with regard to Vitol SA and Shell Gas & Power Developments B.V., the Committee recommended that Med-Gas AS and GasFin Developments AS were not to be allowed to proceed to the RfP.

2.6.5 The second aspect of EoIC evaluation entailed the verification of whether grounds existed for exclusion under specified criteria. Such criteria comprised bankruptcy, failure to pay tax and social security contributions, as well as fraudulent and criminal activities, among others. The

EoIC Evaluation Committee acknowledged that candidates were not obligated to submit a formal declaration or provide evidence regarding the existence, or otherwise, of such exclusionary circumstances. In addressing this aspect, the Committee undertook basic Internet searches with the aim of gathering publicly available evidence that would provide grounds for the exclusion of candidates. None of the candidates were disqualified on this basis. Nonetheless, the Committee indicated that it was imperative that a detailed due diligence process be carried out at the RfP stage and that candidates be required to sign a formal declaration with respect to the exclusionary criteria. The NAO is of the opinion that the due diligence checks undertaken at this stage of the procurement process were sufficient, provided that detailed verification be carried out at the RfP stage. This understanding is based on the assumption that the number of submissions at RfP stage would have been less than those at EoIC stage, hence rendering the due diligence process more efficient. In effect, background checks became a critical requirement at the point when the candidates' interest in the project crystallised in a formal bid to the RfP.

2.6.6 The third aspect of the evaluation consisted of an analysis of the technical experience and reputation of the candidate. Cited in the EoIC evaluation report was that candidates were required to demonstrate experience and expertise, by a key member, in the fields of power plant and LNG terminal development. Furthermore, such expertise was to be held by one of the key shareholders of the consortium, with a minimum shareholding of 20 per cent (erroneously cited as 30 per cent in the report). According to the EoIC Evaluation Committee, while a significant number of the submissions presented the necessary relevant experience with respect to power plants, this was not so in respect of LNG terminal development. Towards this end, the Committee resolved to accept references of LNG projects undertaken by the bidders' EPC contractors. In the case of power plants, the original criteria were retained. The NAO reviewed the EoIC and could not find reference to the requirement of experience in LNG terminal development. Queries in this respect were made to the Chair EoIC Evaluation Committee, who maintained that the requirement was set out in the EoIC. Nevertheless, the NAO could not identify the specific source of this requirement.

2.6.7 The extent of non-adherence to the requirements of the EoIC, captured in paragraph 2.6.3, bore an impact on the EoIC Evaluation Committee's ability to determine the technical experience of bidders. In the NAO's opinion, the Committee was limited in its evaluation by instances of non-compliance, with missing documentation precluding the Committee from arriving at a definite and comprehensive understanding of bids submitted. However, the NAO noted that, at times, the Committee applied different measures to identical shortcomings. For example, the submissions by Yildirim Energy Investments INC, Energy World International Ltd and CPECC lacked the appropriate reference to two projects utilising the desired technology and capacity. In the case of Yildirim, the two referenced power plants of required output were coal fuelled, hence inadmissible for the purpose of the EoIC. In the case of Energy World, while the technology cited was in line with the requirements of the EoIC, the capacity of one of the referenced sites was below the stipulated threshold. In the case of CPECC, the references provided utilised hydropower and coal-based technologies, which were inconsistent with that sought in terms of the EoIC. Notwithstanding this, the EoIC Evaluation Committee recommended the Yildirim and

CPECC bids to proceed to the RfP stage, yet cited these technical grounds for the disqualification of the bid by Energy World.

- 2.6.8 In line with the provisions of the EoIC, candidates were to propose a technical solution to meet the requirements of the GSA and the PPA, duly supported with evidence demonstrating the candidate's ability to deliver the proposed solutions. However, cited in the EoIC evaluation report was that proposed technical solutions were not utilised as part of the evaluation process, but served to provide Enemalta with feedback regarding potential solutions that could be explored in the process. In fact, the technical solutions put forward by candidates were not given any weighting in the evaluation process. For example, Edison S.p.A and Shell Gas & Power Developments B.V. did not provide an outline technical proposal yet were recommended to proceed to the RfP regardless. The NAO noted that the consideration, or otherwise, of technical solutions in the evaluation process was not made clear to prospective candidates in the EoIC; however, it must be acknowledged that the quality of technical proposals could have been adversely influenced had this been indicated.
- 2.6.9 Finally, candidates were required to illustrate their capability to source appropriate finance and demonstrate a level of credit worthiness to support the project. Candidates were also required to demonstrate the management expertise necessary to undertake the solution proposed and access to an appropriate gas supply stream. On review of the submissions, the NAO noted that while most of the candidates complied with these requirements, others failed to submit the required information for consideration by the EoIC Evaluation Committee. Specific reference is made to the submissions by Vitol SA and Shell Gas & Power Developments B.V., who failed to provide documentation rendering evident their financial capabilities. Despite this shortcoming, the Committee recommended that these submissions progress to the RfP stage.
- 2.6.10 The key concern that emerged from the NAO's review of the EoIC evaluation process was the inconsistent approach at times adopted by the EoIC Evaluation Committee in its assessment of submissions. While the NAO acknowledges that a number of submissions were rightly eliminated on sufficient and justifiable grounds, this Office noted that others were allowed to proceed to the RfP despite similar shortcomings. The exclusion of Bumi Armada, Mag Air Energy LLC, DEVCO International LLC and Independent Power Corporation PLC is not questioned by the NAO. This Office also maintains that Energy World, despite its appeal, was justifiably excluded from the process as it was not compliant with the requirements of the EoIC, a fact confirmed by the Procurement (Energy and Fuels) Appeals Board. The NAO's concern becomes evident when one considers that other instances of non-compliance, in cases identical to that subject to appeal, were allowed to progress to the RfP stage. In the case of Med-Gas AS and GasFin Development SA, their submissions were considered ineligible for reasons that were then ignored in the proposals by Vitol SA and Shell Gas & Power Developments B.V. While the NAO acknowledges that an element of latitude prevails in the assessment of diverse proposals, the Office maintains that evaluation must be equitable and that evaluation criteria must be uniformly applied across the board.

Chapter 3

Request for Proposals for a Gas Supply Agreement and a Power Purchase Agreement

Chapter 3

3.1 The Issuance of the Request for Proposals

3.1.1 An RfP was issued on 6 July 2013, inviting candidates shortlisted at the EoIC stage to submit detailed proposals.⁵ Bidders were informed that the RfP superseded any other information provided at the EoIC stage and that scope and process adjustments had been made. In this respect, while the call for EoIC did not restrict applicants to the utilisation of a specific technology for their electricity generation plant, the RfP indicated that only CCGT technology would now be considered. The exclusion of other technologies was based on the fact that all successful applicants at EoIC stage had put forward CCGT technology as the basis for the proposed power plant. The NAO established that no fees were charged by Enemalta for the RfP document.

3.1.2 Bidders were to comply with all instructions, forms, contract provisions and specifications stipulated in the RfP. Enemalta reserved the right to make amendments to the RfP at any time up to the bid submission date, which amendments were to be communicated in writing to the bidders. Bidders were to submit proposals by 16 September 2013.

3.1.3 The RfP was to serve the following purposes:

- a. set out the rules of the bid process;
- b. set out the requirements to prospective bidders for the preparation of their bids;
- c. provide bidders with information about the project to allow for the preparation of bids;
- d. present drafts of key agreements to be entered into by the SPC, now registered as Malta Power and Gas Ltd,⁶ following its acquisition by the chosen bidder; and
- e. outline the process for the evaluation of bids for the selection by Enemalta of the preferred bidder, whose bid best met the criteria set in the RfP.

⁵ Some sources cite the launch of the RfP as 7 July 2013. Enemalta confirmed that prospective bidders were informed to download the RfP on 6 July 2013.

⁶ The SPC was incorporated as Malta Power and Gas Ltd on 12 June 2013. When Enemalta selected the ElectroGas Consortium as the preferred bidder, the Consortium acquired Malta Power and Gas Ltd and changed its name to ElectroGas Malta Ltd with effect from 9 July 2014. For ease of reference, in the report, Malta Power and Gas Ltd is referred to as the SPC until its change in name, at which point it is referred to as ElectroGas Ltd.

3.1.4 The RfP was divided in six volumes:

- a. Volume 1 included the bid process timetable, a description of the project and the key dates for the completion of the activities to be carried out by the SPC during the pre-delivery period, that is, the 18-month period within which the project was to be completed. In addition, Volume 1 comprised a summary of the draft contractual agreements, a description of the bid submissions and the evaluation process, as well as instructions to bidders for the compilation and submission of bids.
- b. Volume 2 included a pro-forma document for clarification requests, a pro-forma bid bond, an indicative list of the permits required for the project and a draft construction management plan. Furthermore, presented in Volume 2 was a list of rules that Enemalta was to apply in escalating specified bid parameters, from the bid submission date to the effective date.
- c. Volume 3 contained appendices that provided essential technical data, including details of the leased premises, that is, the premises held by Enemalta under title of lease which it was authorised to sublet to the SPC for the purpose of the project. Additionally, Volume 3 provided details of the two sites earmarked for the project, referred to as Sites A and B, their associated geotechnical data and climate character. Also included were details relating to the required EIA.
- d. Volume 4 provided the project scope, set on the base model of the SPC's energy facilities. The report of project scope drafted by Enemalta provided a description of the project, elaborated on site selection, outlined issues and mitigating measures and cited cumulative environmental impacts.
- e. Volume 5 contained draft copies of key agreements that the successful bidder was required to enter into in relation to the project. These were the Share Purchase Agreement, the IA, the Site Lease Agreement, the Shared Responsibility Agreement, the PPA, the Electricity Connection Agreement, the GSA, the Site Services Agreement and the Plant Manning Agreement.
- f. Volume 6 contained the bid forms that were to be duly completed by bidders in the submission of their bid. These bid forms were to be utilised by Enemalta in the evaluation of bids submitted.

Bid Process Timetable

- 3.1.5 The RfP included a bid process timetable, identifying dates and deadlines for the key stages in the process leading to the selection of the successful bidder. The bid process was designed to ensure that the facilities were operational within 18 months, or less, from the date of execution of the Energy Contracts. The bid process timetable is illustrated in Figure 8.

Figure 8: RfP bid process timetable

Action	Date
RfP launch date	5 July 2013
Bidders' conference	26 July 2013
Final date to request changes in the bidding group composition	26 July 2013
Final date for bidders to make proposals for amendments to the draft agreements	26 July 2013
Final date for Enemalta to communicate decision on changes to bidding group	2 August 2013
Publication of final draft of agreements	19 August 2013
Final date for bidders to submit requests for clarifications	6 September 2013
Final date for response to clarification requests	10 September 2013
Bid submission deadline	16 September 2013

Source: Enemalta (2013)

3.1.6 The process, from the RfP launch to the bid submission deadline, was to span from 5 July 2013 to 16 September 2013, although it was noted that the timetable was indicative and for information purposes only, and in this respect Enemalta was free to amend any of the proposed dates at any time prior to the bid submission deadline. Enemalta was to notify bidders of any such amendments.

Project Details

3.1.7 Background information on the project, outlining its context within the Maltese energy sector as well as its objectives and scope, was presented in the RfP. In line with the increased demand for electricity in Malta, heightened environmental considerations and the need for increased energy efficiency and lower-cost electricity, Enemalta sought new energy contracts for the procurement of electricity and gas. It was in this respect that the key objectives of the project were to:

- a. reduce utility bills by a minimum of 25 per cent;
- b. achieve price stability in utility bills;
- c. diversify the energy mix for greater security of supply; and
- d. reduce carbon emissions to sustainable levels.

3.1.8 The RfP was issued for the supply and delivery of electricity to Enemalta under the terms of the PPA, which was to be sourced from the new plant at Delimara 4. In addition, the RfP provided for the supply and delivery of natural gas to Enemalta under the terms of the GSA to fuel Enemalta's existing plant at Delimara 3 following its conversion to operate on natural gas and gasoil. Enemalta planned to commence the conversion of Delimara 3 shortly after the Energy

Delivery Date, that is, the point at which Delimara 4 was fully operational, which works were to be completed within one year from commencement. The Energy Agreements⁷ were to be entered into for a period of 18 years, during which the gas and energy required were to be sourced from the facilities that were to be developed by the successful bidder. It was in this context that bidders were required to provide a reliable source of supply of LNG as could be required for the term of the Energy Agreements. Furthermore, the SPC, now acquired by the successful bidder, was required to maintain defined levels of strategic stocks of LNG and fuel for the term of the Agreements.

3.1.9 Additional details regarding the SPC, the company purposely set up by Enemalta to facilitate the contracting process, were provided in the RfP. The SPC was incorporated with the object of developing, installing and operating the energy facilities necessary to supply energy and gas in terms of the Energy Agreements. The successful bidder was to acquire the SPC, a fully owned subsidiary of Enemalta, for a consideration of €30,000,000. On the purchase of the ordinary share capital of the SPC, the successful bidder was allowed to establish any group structure deemed fit for the purpose of fulfilling the requirements of the project. Nonetheless, the minimum shareholding percentages required to be held by the different members of the bidder, as specified in the RfP and the bidder's bid, were to be adhered to. The SPC would then enter into the Transaction Agreements, that is, all contracts relating to the project, with Enemalta.

3.1.10 The energy facilities were to be constructed at sites identified by Enemalta which formed part of its Delimara site. Detailed plans of the sites, referred to as Site A and Site B, were appended to the draft IA (Figure 9 refers). Geotechnical evaluations were carried out by Enemalta for both sites, with results appended to the RfP. The sites were to be leased from Enemalta for a term specified in and in accordance with the Site Lease Agreement, a draft of which was appended to the RfP.

3.1.11 In anticipation of the bids yet to be made, Enemalta submitted a full development application with the Malta Environment and Planning Authority (MEPA). The application process also involved an EIA, which was being prepared by the SPC. The application included three sites, two of which were on land within the Delimara site, while the third was an offshore area intended to allow bidders to propose structures required for the mooring or berthing of the FSRU or the FSU. Noted in the RfP was that the full development application submitted was generic and only included volumes of construction without any specific details. On selection of a bidder, detailed plans were to be drawn up and submitted to MEPA for final approval.

⁷ The terms 'Energy Contracts' and 'Energy Agreements' were used interchangeably by Enemalta and are cited accordingly by the NAO.

Figure 9: Site A and Site B



Source: Enemalta (2013)

3.1.12 During the construction and commissioning of the project, the SPC was to obtain the necessary IPPC permit. Although an application for this permit was in the process of being submitted, full processing and approval could only be undertaken once the design was sufficiently detailed to allow proper evaluation. Aside from requirements arising in terms of the Seveso Directive⁸ and the COMAH regulations⁹, the successful bidder was to obtain the necessary approvals from the relevant authorities, including the MRA and Transport Malta. Furthermore, prior to the signing of the PPA, the GSA and the Site Lease Agreement, the SPC was to obtain a generation licence under the MRA Act. Although Enemalta would endeavour to provide reasonable assistance in the SPC's efforts to obtain government permits, licences and authorisations, the bidders would remain solely responsible to ensure adherence to all legal requirements.

3.1.13 The RfP provided a high-level completion milestone plan and details regarding project construction, commissioning, operation and decommissioning. According to the RfP, the energy facilities were to be developed in accordance with the minimum functional specifications set

⁸ The Seveso Directive applies to industrial establishments in the European Union where dangerous substances are used or stored in large quantities, mainly in the chemical and petrochemical industry, as well as in fuel wholesale and storage (including LNG) sectors (Directive 2012/18/EU).

⁹ The Seveso Directive was transposed to Maltese law through the Control of Major Accidents and Hazards Regulations (Legal Notice 6 of 2005).

out in the draft IA attached thereto. Works were to be completed and commissioned within a maximum period of 18 months from the signing of the Energy Agreements. The number of EPC contractors that the SPC was to engage for the construction of the facilities was limited to two. The electricity facility was to be designed to provide quasi base load capacity energy, operating at an average annual capacity factor of about 90 to 95 per cent over the term of the PPA. The gas facility was to fulfil the requirements of both the SPC's electricity facility at Delimara 4 and Enemalta's Delimara 3, with the latter operating at an average annual capacity factor of about 66 per cent over the term of the GSA. The SPC was to also ensure the secure operation and maintenance of the facilities.

- 3.1.14 As part of their submission, bidders were to provide a project schedule, as well as a description of the project management procedures that would be followed to ensure the timely commencement of supply in terms of the Energy Agreements. In addition, the SPC was to ensure that suitable access to the site was provided, maintained and controlled, consult with local authorities to determine whether changes to the local infrastructure were required, establish and maintain sound labour management practices, and comply with all applicable requirements. In addition, the RfP stipulated the requirements relating to health and safety procedures and the systems designed to provide for quality assurance. The SPC was to be responsible for carrying out all commissioning and testing procedures that would enable Enemalta to ensure the overall reliability and safety of the plant prior to connection to Enemalta's existing infrastructure. The commissioning programme would only be considered complete on the satisfactory conclusion of all testing. Furthermore, the SPC was to assume responsibility for the decommissioning of the energy facilities. In this regard, bidders were to make a financial provision in their bids.

Financing Considerations

- 3.1.15 Information regarding the project financing, the finance data requirements for each bid, as well as accounting and fiscal considerations were included in the RfP. No restrictions with respect to financing mechanisms were to be imposed on the preferred bidder. Enemalta recognised that the preferred bidder may wish to raise limited recourse financing in relation to the project and that lenders would expect to be afforded certain rights in relation to such financing. Accordingly, in relation to the Transaction Agreements, Enemalta agreed to negotiate, in good faith, a direct agreement with the lenders and the SPC, if so requested by the preferred bidder. Neither the Transaction Agreements, nor the SPC's obligations emanating therefrom were conditional on the Effective Date, here understood as the date on which the last of the agreements was executed by the parties. Moreover, the effectiveness of the Transaction Agreements was not subject to any conditions, including the financing of the project. Although Bidders were responsible for sourcing their own financing requirements, according to the RfP, Enemalta was in discussions with the European Investment Bank (EIB) with a view to provide bidders with access to other financing facilities.

- 3.1.16 In order for Enemalta to ensure that bidders delivered the project on a commercially sound and a financially robust basis, bidders were required to submit detailed financial information. Submissions were to include a financial model, projected financial statements and relevant supporting information. Failure to adhere to these requirements would render bids non-compliant.
- 3.1.17 Moreover, Enemalta sought to ascertain that bidders had access to the necessary funding, and that the proposed funders were fully aware of the terms on which a bid was submitted and accepted the commercial terms and requirements of the RfP. By the Effective Date, bidders were to have secured equity funding and financing facilities to meet all the costs associated with the project. Details of the funding structures, showing all the proposed sources of funding throughout the lifetime of the project, including that relating to working capital and the servicing of each source of funding, were to be included in the bid. The drawdown from, repayment and/or service of each funding source was to be provided separately, specifying the terms of each source and the parties and institutions involved. These requirements applied to the providers of equity, subordinated debt, mezzanine debt and senior debt. Other data requirements related to the funding of additional expenditure. The flexibility of funding arrangements for additional expenditure was to be described in the bid and accompanied with documented support from funders whenever possible. Furthermore, bidders were to indicate their proposals for due diligence by their funders and elaborate on how this process was to be expedited to allow for the Effective Date to be achieved as quickly as possible following the selection of the preferred bidder.
- 3.1.18 All funding proposals were to be supported by a letter addressed to Enemalta from the bidder’s financial adviser stating that, based on the Transaction Agreements and the bid submissions, the proposals were realistic and achievable, subject to there being no material adverse changes in the market. In cases where funding was reliant on debt funding or equity, a letter of support from funders was to be procured by bidders. Such letters of support were to specify the level of confidence of funders in being able to provide equity or enter into a loan agreement.
- 3.1.19 Bidders were to provide financial projections for the full duration of the project term in the form of a financial model. Financial projections were to be presented for at least each year of the project term, including the first contract year incorporating the implementation period. All financial models were to meet the expected requirements of funders and allow for sensitivity analysis in key areas of risk, including, interest rate and foreign exchange changes, capital cost increases or decreases, delays in achieving project deliverables as well as operating cost and revenue variations.
- 3.1.20 The financial model assumptions were to be clearly stated and included:
- a. a statement of the general accounting assumptions applied to the financial model and their compliance with generally accepted practice in Malta, including full details of the assumed depreciation policy;

- b. a detailed assessment of all tax charges, including the assumptions used in relation to tax, as well as details related to the treatment of lifecycle expenditure and asset replacement for tax purposes; and
- c. references to any significant factors or assumptions that underpin the financial projections and funding arrangements.

3.1.21 Financial model projections were to include:

- a. a cost breakdown, with bidders providing Enemalta with a high level indication of costs, including depreciation, insurance and administrative costs, linked directly to the financial model. The total costs for each operating period were to be reconciled with the cost of sales in the projected profit and loss account;
- b. an analysis of the tax charge, which was to provide a full calculation of taxes including profit before tax, any capital allowances or deferred taxes, taxable profits and any losses carried forward;
- c. an annual analysis of movements on loans that was to include details of opening and closing balances, amounts drawn down, repayments and interest charges per loan;
- d. projected cashflows, which were to indicate profit before interest and tax, movement in working capital, capital expenditure, cash available for debt service and dividends paid, among others;
- e. projected balance sheets, including fixed assets at cost and accumulated depreciation, debtors and creditors, as well as capital and reserves;
- f. projected profit and loss accounts that, as a minimum, were to include turnover, cost of sales and gross profit, overheads and profit/loss before interest and tax, interest charges and interest income, profit before tax, taxation and profit attributable to shareholders, dividends, retained profit for the period, retained profit brought forward and retained profit carried forward; and
- g. a projected debt service schedule of the debt service cover ratio, the loan life cover ratio, the project life cover ratio and gearing, as well as other ratios required by the funders or considered relevant, calculated on an annual basis.

3.1.22 With regard to financing arrangements, for each class of debt finance to be raised, bidders were to provide:

- a. the identity of the lender;
- b. the amounts to be provided by each lender;

- c. the terms and conditions attached to each loan or lease finance;
- d. a confirmation of the extent to which the funds were committed; and
- e. a confirmation that all funds were to be committed subject only to the acceptance of the bid and the conditions precedent set out in the Transaction Agreements.

Additionally, working capital requirements were to be specified and evidence was to be provided showing how these requirements were to be financed. Bidders were also required to present evidence of any contingency or standby finance available and identify the parties providing it. In cases where standby finance was not required, access to funds from other sources was to be specified.

3.1.23 For each major type of equity, the following information was required:

- a. the identity of the investors;
- b. the amounts to be subscribed by each investor;
- c. the terms and conditions of the subscription;
- d. the minimum return requirement for each class of risk capital;
- e. dividend rights attached to the subscription;
- f. voting rights attached to the subscription;
- g. terms and any other agreements between the investors, in their capacity as investors in the EPC contractor, O&M contractor or the gas turbine manufacturer;
- h. any other right attached to the subscription; and
- i. the extent to which the funds were committed.

3.1.24 Any hedging arrangements required for the purpose of the project were to be clearly specified by bidders in their proposals. These were to include interest rates, foreign exchange and the Harmonised Index of Consumer Prices (HICP).

3.1.25 Moreover, bidders were requested to provide a complete funding plan schedule. This was to include an indication of the total funding required, covering capital and development costs, start-up costs, capitalised interest, finance and legal costs, working capital and decommissioning costs. Bidders were to note that capital and development costs were to be supported by a development and asset replacement programme, which was to provide details of the assets

disposed and acquired in each year. In addition, the funding plan was to indicate the total funding provided, with details of equity, subordinated debts, leasing, senior debt and other funding items. The total funding required was to equal the total funding provided. Finally, the funding plan was to provide details of any standby funding.

3.1.26 In terms of accounting and fiscal considerations, the PPA and GSA were to be considered as supply contracts for the purchase of gas and electricity, which were to be entered into by Enemalta and the SPC, following the purchase of the latter's shares by the successful bidder. For each of the Agreements, bidders were to provide the following information:

- a. the amount of the capital portion included in the proposed capacity payment to be made throughout the project term. Capital payments refer to payments to be effected by Enemalta to the SPC for energy and gas made available;
- b. the bidder's cost of finance for the project;
- c. the cost of each of the asset components of the project;
- d. the economic life and the remaining useful life of each of the SPC's energy facilities;
- e. the residual value, if any, that the SPC would charge Enemalta at the end of the term of the Energy Agreements, unless the term is extended; and
- f. the SPC's ownership title in respect of its Energy Facilities.

Contractual Arrangements

3.1.27 Draft copies of the agreements that were to be entered into between Enemalta and the successful bidder with regard to the project were attached as an appendix to the RfP. A brief description of the purpose and content of each of the agreements was also presented in the RfP main document. According to the RfP, these agreements were the:

- a. IA;
- b. Share Purchase Agreement;
- c. Site Lease Agreement;
- d. PPA;
- e. GSA;
- f. Electricity Connection Agreement;

g. Shared Responsibility Agreement;

h. Site Services Agreement; and

i. Plant Manning Agreement.

3.1.28 The IA set out the framework of the contractual relationship between the SPC and Enemalta in relation to the project, and defined the terms on which the SPC was to:

a. undertake the necessary preparatory activities in order to be in a position to supply energy and gas to Enemalta in accordance with the provisions of the Energy Agreements;

b. meet its ongoing obligations under the Transaction Agreements during the term of the Energy Agreements; and

c. meet its obligations at the end of life of the SPC's energy facilities.

3.1.29 Other key matters outlined in the IA related to one or more of the Transaction Agreements in either or both the pre-delivery period and the operating period. Such matters included obligations in relation to:

a. insurance;

b. site management;

c. performance guarantee;

d. minimum functional specifications;

e. milestones;

f. the SPC's financial model; and

g. termination provisions.

3.1.30 In terms of the IA, in order to enable bidders to minimise the capital cost component of the gas and energy tariffs during the term of the Energy Agreements, Enemalta considered making a lump sum payment, the 'Sale Option Fair Value'. Bidders were to specify the amount and date of any such payment in their bid, and account for this assumption in the financial model.

3.1.31 The Share Purchase Agreement was to regulate the terms and conditions pursuant to which the successful bidder was to purchase the ordinary share capital in the SPC. The terms and conditions were listed in an appendix to the RfP.

- 3.1.32 A Site Lease Agreement was to be entered into between the SPC and Enemalta. The agreement set out the terms and conditions under which the premises were to be granted to the SPC by title of lease, for a period equivalent to the expected usable life of the SPC's energy facilities while taking into account the eventual decommissioning of the plants. Noted in the RfP was that this agreement did not confer any rights with respect to any offshore works and facilities proposed. Any such rights were to be agreed between the SPC and the relevant authorities; nonetheless, Enemalta would assist and enter into discussions with the authorities to expedite the process of attaining such rights and/or authorisations, wherever reasonably possible.
- 3.1.33 The PPA and the GSA, together the Energy Agreements, set out the terms for the primary commercial, technical and operating relationships between the SPC and Enemalta in relation to the supply of energy and gas. The PPA set out the terms on which the SPC was to test and commission its electricity facilities, provide energy and ancillary services to Enemalta and, in return, receive payment. In turn, the GSA set out the terms on which the SPC was to test and commission its gas facilities, provide gas to Enemalta and, in return, receive payment. The Energy Agreements had an initial term of eighteen years from the Scheduled Energy Delivery Date and the Scheduled Gas Delivery Date, as applicable. The Energy Agreements imposed important obligations on the SPC in relation to securing long-term LNG supplies and maintaining minimum amounts of LNG, stored locally, at all times.
- 3.1.34 In terms of the PPA and the GSA, bidders' prices for energy in the PPA and gas in the GSA were to be based on fixed pricing for the first five years after the Energy Delivery Date and the Gas Delivery Date, as applicable. After this initial five-year period, indexed prices for energy made available at Delimara 4 and gas availability were to be linked only to inflation. Bidders were to index LNG-prices in the PPA and the GSA using Brent Crude indexation, and the fifth year of the fixed price period was to be taken as the base year for such indexation. Moreover, when setting availability payments, bidders were to allocate 71 per cent and 29 per cent of the relevant costs of the FSU or the FSRU to the PPA and the GSA, respectively. This apportionment reflected Enemalta's anticipated long-term average energy flows through the two Energy Agreements.
- 3.1.35 The other agreements dealt with commonalities arising from the shared site of the Delimara Power Station. The Electricity Connection Agreement was intended to regulate the connection of the SPC's electrical facilities to Enemalta's existing network. The agreement contained key information on the available routing for connection cabling, the electrical and other characteristics required, as well as metering requirements. The common obligations and responsibilities of Enemalta and the SPC under the Energy Agreements were set out in the Shared Responsibility Agreement. The Site Services Agreement specified the range of services, and the applicable terms, that Enemalta was willing to provide to the SPC's energy facilities, if so requested by the SPC. Finally, the Plant Manning Agreement set out the terms on which Enemalta was to make available operating personnel for secondment to the SPC. In terms of this agreement, the successful bidder was required to prioritise use of personnel employed by Enemalta in the operation of the SPC's energy facilities.

3.1.36 On expiry of their initial term, the Energy Agreements were subject to extension, at the SPC's option, for a maximum period equivalent to the useful life of its energy facilities. Nonetheless, any extension was subject to agreement on the terms of such an extension between the SPC and Enemalta.

3.1.37 As part of the bid process, Enemalta granted bidders the opportunity to propose reasonable improvements to the draft Transaction Agreements. Proposed amendments were to be submitted to Enemalta by 26 July 2013, as per the bid process timetable set out in the RfP. After evaluating proposals submitted and incorporating acceptable amendments, as well as any other revisions required, Enemalta was to issue a revised version of the Transaction Agreements by 19 August 2013, in line with the bid process timetable.

Bid Submissions

3.1.38 Bidders were to submit bids that met the requirements of the Transaction Agreements. In line with Enemalta's intention to provide consumers with a stable end user price for a defined period, bidders were to quote a fixed price with respect to the PPA and the GSA for the first five years of the term. In the case of both Agreements, payments by Enemalta were to compensate the SPC for energy or gas made available and energy or gas supplied.

3.1.39 With respect to the PPA, the five-year fixed Energy Availability Payment per Megawatt thermal (MW_{th}), that is, the energy made available to Enemalta, was to incorporate the following elements:

- a. an apportioned base capacity charge for LNG, to be levied specifically for the allocation of the use of the SPC's gas facilities by its electricity facilities; and
- b. a direct base capacity charge for power for the use of the SPC's electricity facilities in the production of energy.

3.1.40 The five-year fixed Energy Charge per Megawatt hour electric (MW_{he}), that is, the charge in respect of energy actually supplied to Enemalta, entailed the following:

- a. a fuel cost per MW_{he}, for fuel passed through the SPC's gas facilities to its electricity facilities;
- b. a variable operating cost per MW_{he}, for fuel passed through the SPC's gas facilities to its electrical facilities; and
- c. a variable operating cost per MW_{he} to be charged by the SPC's electrical facilities.

3.1.41 In the case of the GSA, bidders were to specify a five-year Energy Availability Payment made up of a fixed base capacity charge for gas, which was to be levied specifically for the allocation

of the availability of the capacity of the SPC’s gas facilities to Enemalta. In addition, bidders were to specify a fixed Energy Payment per mmbTU for the first five years of the term, which corresponded to the gas actually supplied by the SPC to Enemalta. The fixed Energy Payment comprised:

- a. the gas cost per mmbTU to be charged to Enemalta by the SPC’s gas facilities; and
- b. the variable operating cost per mmbTU to be charged to Enemalta by the SPC’s gas facilities.

3.1.42 Beyond the five-year fixed term, escalated charges for availability and energy payments were to be indexed according to the Brent Price Index. Bids were to be based on the annual forecasts presented in Figure 10.

Figure 10: Brent Price Index, 2013-2034

Year	Brent	Year	Brent	Year	Brent
2013	100.0	2021	118.3	2029	152.2
2014	98.1	2022	123.6	2030	155.2
2015	101.4	2023	129.0	2031	158.3
2016	103.7	2024	134.7	2032	161.5
2017	106.0	2025	140.6	2033	164.7
2018	108.4	2026	143.4	2034	168.0
2019	110.9	2027	146.3		
2020	113.4	2028	149.2		

Source: Enemalta (2013)

Instructions to Bidders

3.1.43 According to the RfP, only bidders who had been approved by Enemalta subsequent to the EoIC process were eligible to submit a bid. In bids submitted, bidders were to include only the bidding group members approved by Enemalta following the EoIC process. Changes in the composition, roles and principal relationships between the members of the bidder were allowed only if the prior written consent of Enemalta was obtained. Approval in such cases was to be granted if the bidder was able to demonstrate, to the satisfaction of Enemalta, that any departing member was to be replaced by a member with substantially equivalent or better skills or resources. In this respect, the eligibility criteria were to remain as specified in the EoIC. Bids would be invalidated if changes in the membership of a bidding group, or the inclusion of a member subsequent to the EoIC process, were not preceded by Enemalta’s written consent.

3.1.44 Parties not eligible to be bidders or to participate in any capacity in the bid process were:

- a. any Maltese national public entity or municipal entity in any role, with the exception of Enemalta in its specific roles defined in the RfP;
- b. development financial institutions owned by the Government;

- c. companies in which the Government had an ownership of over 25 per cent;
- d. any persons blacklisted by the Malta Department of Contracts or any relevant professional body, if applicable; and
- e. any person found guilty in a court of law of fraud or corruption-related crimes.

3.1.45 Additionally, no person employed by Enemalta or assisting or advising Enemalta in relation to the project was permitted to advise a bidder, its equity members or subcontractors, or be a member of any bidder without the prior written consent of Enemalta. By virtue of submitting a bid, bidders were warranting that no such person had advised them or its equity members or subcontractors, or is a member of the bidder.

3.1.46 Restrictions applied with respect to participation in multiple bids. An equity member of one bidder was not allowed to be an equity member of another bidder. It was not permissible for an enterprise to bid for a given contract individually or as a partner in a bidder, and at the same time be nominated as a subcontractor by any other bidder or bidding group. On the other hand, an enterprise could act as a subcontractor for any number of bidders and bidding groups, provided that it was not participating individually or as part of a bidder, and that the nominations would not lead to a conflict of interest, collusion, or improper practice.

3.1.47 The bidder, or the members of a consortium (in cases where the bid was submitted by a consortium), had to be an enterprise, duly authorised, existing and registered in good standing under the laws of its country of incorporation and domicile. Where a bid was submitted by a consortium:

- a. each member of the consortium was to accept joint and several responsibility for all obligations in relation to the RfP, as specified in a letter of commitment;
- b. all bids were to indicate the legal name, principal address or place of business, place of incorporation and registered number of incorporation of each member of the consortium;
- c. one member of the consortium was to be nominated as the lead member, with the remaining consortium members appointing the lead member as responsible for all dealings with Enemalta by power of attorney; and
- d. the lead member of the consortium was responsible for executing the letter of commitment and other bid forms.

3.1.48 Any bidder involved in canvassing any member or official of the Government or Enemalta concerning the project was to be disqualified. Bidders were also to be disqualified if they discussed with each other any aspect of their response to the RfP, exchanged information about the project without the written consent of Enemalta, or colluded in respect of the project.

Furthermore, no lender could place a restriction on a bidder that substantively limited the bidder's options in terms of purchasing future hedging arrangements.

3.1.49 Specified in the RfP was the fact that late bids, received after the submission deadline of 16 September 2013, would be rejected, and therefore not evaluated. Aside from the original bid, bidders were to submit five hard copies and an electronic copy of the bid. The information to be submitted as per bid forms appended to the RfP comprised:

- a. a letter of commitment from the lead member;
- b. a confidentiality undertaking from the bidder and each member of the consortium, signed by the lead member;
- c. details of the composition of the bidder and/or each member of the bidding consortium;
- d. the proposed shareholding in the SPC of each consortium member;
- e. updated information on the consortium structure, in cases where such structure had changed from the EoIC;
- f. information regarding the bidder's, or in the case of a consortium, the consortium members', relevant experience in relation to similar projects implemented during the previous ten years, including information specifying the role each bidder or consortium member played in each of the referenced projects;
- g. a description of any additional technical capabilities of the bidder, or in the case of a consortium, the consortium members;
- h. the most recent audited accounts, as well as other information related to the financial standing and creditworthiness of the bidder, or in the case of a consortium, the consortium members. The financial standing of the consortium members' parent company was required and considered only if the parent company guaranteed performance of the relevant bidder or consortium member;
- i. tariff proposals and other Energy Agreements data as per the draft agreements presented with the RfP;
- j. proposals for the design and construction of the SPC's energy facilities, including the technology to be deployed, in accordance with the Transaction Agreements;
- k. letters of commitment from lenders, if applicable, major equipment suppliers, contractors and consultants;

l. proposed amendments to the Transaction Agreements; and

m. details of the proposed insurance coverage.

3.1.50 Each bidder was to provide a bid bond for €500,000, which was to be valid and effective from the date of its issue until the earlier of the expiry of the bid validity period and the Effective Date, understood as the date on which the last of the agreements was signed by the successful bidder and Enemalta. If any bidder did not supply the bid bond as required, Enemalta was to remove the bidder from the bid process. The bid bonds of bidders not selected as the preferred bidder or the reserve bidder were to be returned by Enemalta 14 days after the expiry of the bid bond. On the other hand, the bid bonds of the preferred bidder and the reserve bidder were to be returned when the former lodged the performance guarantee with Enemalta in accordance with the Energy Agreements.

3.1.51 Bidders were to submit their queries and requests for clarifications by 6 September 2013. Proposals for the amendment of the draft Transaction Agreements were to be submitted by 26 July 2013. The requests for clarifications as well as Enemalta's responses were to be made available to all bidders. All bidders were required to attend the bidders' conference, scheduled prior to the submission deadline, which conference constituted the only opportunity for bidders to raise oral queries and receive oral responses. Enemalta intended to produce a record of the bidders' conference and circulate it to all bidders following the meeting. Additionally, Enemalta reserved the right to issue clarification notes to bidders, any time before the bid submission deadline, which could effectively modify the RfP or any information previously supplied to the bidders.

3.1.52 Included in the RfP was information about the sites identified for the project, which consisted of two separate plots of land and an offshore area on which the SPC's energy facilities were to be constructed and operated. It was the bidder's responsibility to determine the suitability and adequacy of the sites. Notwithstanding any information provided in the RfP, bidders were required to undertake their own independent assessment of ambient conditions, as well as national regulations. Bidders were advised to visit the sites before preparing their bids and to undertake an appropriately detailed assessment of all factors affecting the project. Furthermore, bidders were to determine the optimum location and arrangement of the SPC's energy facilities, taking into account the location of all relevant interface points and road access. Site visits were to be carried out during the Bidders' Conference.

3.1.53 Stipulated in the RfP was that Enemalta would open the bids received on the bid submission deadline, that is, 16 September 2013. Enemalta was to announce the list of bidders that had submitted bids shortly thereafter. Enemalta retained the right to accept or reject any bid or to annul the bid process at any time before the Effective Date. However, the bid process was to be suspended or cancelled by Enemalta for reasons that were objective, non-discriminatory or considered to be in Enemalta's best interest. Any dispute or appeal arising from the bid process was to be resolved in terms of the Procurement (Energy and Fuels) Appeals Board Regulations (Legal Notice 155 of 2013).

3.1.54 On conclusion of the evaluation process, Enemalta was to inform the preferred bidder and the reserve bidder, notifying them provisionally of their status. On receipt of acceptance by the preferred bidder and the reserve bidder, Enemalta was to issue a public announcement to this effect. The preferred bidder was to acquire the SPC and enter into the Transaction Agreements within the time limits set in the RfP.

Request for Proposals Evaluation Procedure

3.1.55 According to the RfP, bids were to be evaluated in five stages, namely:

- a. Stage 1 – checked for completeness;
- b. Stage 2 – compliance with minimum legal, commercial, technical and financial requirements;
- c. Stage 3 – commercial, technical and financial evaluation;
- d. Stage 4 – comparison of bid price and terms; and
- e. Stage 5 – composite evaluation, combining evaluations from Stages 3 and 4.

3.1.56 At Stage 1, bids were to be checked for completeness. Complete Bids were to contain a complete set of the bid forms, include only bidding group members approved by Enemalta as per the requirements of the EoIC, provide a bid bond to Enemalta valid for the required period, and include all compulsory bid forms. Bids were to be submitted in the format and quantities specified. Only complete bids were to proceed to the subsequent stage of the evaluation process. In the case of administrative omissions, Enemalta was to allow bidders an opportunity to remedy this shortcoming within three business days, failing which the bid would then be rejected.

3.1.57 At Stage 2, bids were to be reviewed to determine whether they fulfilled the minimum legal, commercial, technical and financial requirements stipulated in the RfP. Only bids that met or exceeded the minimum requirements were to proceed to the next stage of the evaluation. In this respect, bids were to satisfy the qualification requirements of the EoIC, the minimum functional specifications of the SPC's gas and electricity facilities as outlined in the draft agreements made available with the RfP, and any other obligatory minimum requirements specified in the RfP. Furthermore, bids were to provide a credible financial model and financing plan. Should a bid fail to pass Stage 1 or Stage 2, Enemalta would declare the bid as non-compliant and return the bid bond.

3.1.58 At Stage 3, bids were to be evaluated on the basis of their commercial, technical and financial strength. The evaluation at this Stage was to consider the degree to which bidders exceeded the minimum requirements assessed in Stage 2. The technical and financial strength of each

bid was to be determined through reference to four criteria, namely, the bidder’s additional experience in electricity facilities, the bidder’s additional experience in gas facilities, matters relating to energy and gas delivery, and the bidder’s financial strength. Each of the criteria were to be weighted as indicated in Figure 11, to a maximum of 100 points.

Figure 11: RfP Evaluation Stage 3 – Criteria and weighting

Criterion	Weight
Additional electricity facilities experience	25
Additional gas facilities experience	25
Energy and gas delivery	30
Bidder’s financial strength	20
Total	100

3.1.59 As indicated in Figure 11, bidders could be awarded a maximum of 25 points for experience in the electricity facilities sector exceeding the minimum requirements. This experience must have been gained in relation to CCGT projects, which had achieved commercial operation, with a send out capacity of at least 150MW. References quoted with respect to this experience were to be separate and in addition to those cited in Stage 2. A detailed breakdown of the specific criteria that were to be utilised in the allocation of marks for additional experience in the electricity facilities sector is presented in Figure 12.

Figure 12: Marking scheme - Additional electricity facilities experience

Subject	Maximum points	Score description
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	10	Two points per relevant project
Additional experience of the EPC contractor(s) committed to the construction of the SPC’s electricity facilities	5	One point per relevant project
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC’s electricity facilities	5	One point per relevant project
Relevant experience of the management team and key personnel of the commercial management of a CCGT power plant, with the employees named and their roles in the SPC clearly identified	5	One point per person with at least 10 years of relevant experience
Total	25	

3.1.60 The second criterion related to the additional experience that bidders had in gas facilities, for which bidders could be awarded a maximum of 25 points for exceeding the minimum requirements. This experience must have been gained on LNG regasification projects that had achieved commercial operation with a send out capacity of at least 0.3 million tonnes per annum (MTPA). Enemalta would also consider other projects that represented comparable relevant experience, such as gas liquefaction terminals, LNG FSU, LNG FRSU and LNG tankers of comparable capacity. References cited in this regard were to be in addition to those indicated in Stage 2. The specific criteria that were to be utilised in the allocation of marks for additional experience in the gas facilities sector is presented in Figure 13.



Figure 13: Marking scheme - Additional gas facilities experience

Subject	Maximum points	Score description
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	10	Two points per relevant project
Additional experience of the EPC contractor(s) committed to the construction of the SPC’s gas facilities	5	One point per relevant project
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC’s gas facilities	5	One point per relevant project
Relevant experience of the management team and key personnel of the commercial management of a power station, with the employees named and their roles in the SPC clearly identified	5	One point per person with at least 10 years of relevant experience
Total	25	

3.1.61 Additional points were to be awarded to bidders with respect to their capabilities in relation to energy and gas delivery, as outlined in Figure 14. A maximum of 30 points could be allocated in this respect.

Figure 14: Marking scheme - Energy and gas delivery

Subject	Maximum points	Score description
LNG supplier as a member of the consortium, with an equity holding of at least 20 per cent, with proven access to sufficient LNG quantities for the entire duration of the Energy Agreements	10	Zero points if none
Ten points if one or more		
Existing committed commercial arrangement with one or more LNG suppliers to supply sufficient LNG quantities for the entire duration of the Energy Agreements	5	Zero points if none
Five points if one or more		
Consortium member, with an equity holding of at least 20 per cent, who can demonstrate a proven delivery plan for gas and energy, including project management and implementation structure	10	Two points per plan
Committed commercial arrangement with one or more LNG suppliers with a proven delivery plan for the PPA and GSA. Supplier/s must have successfully implemented a similar delivery plan for the delivery of a minimum of 0.5 MTPA of LNG from liquefaction source to the delivery of gas or energy to a final consumer	5	One point per plan
Total	30	

3.1.62 Finally, a maximum of 20 points could be allocated to bidders for indicators of financial strength over and above the EoIC threshold criteria. These specifically related to the credit rating of the lead member and any additional experience of the financial adviser (Figure 15 refers). The financial adviser, who was to represent the bidder during all activities related to the procurement of finance required for the construction of the SPC's energy facilities, could have been an internal function within one of the bidder consortium members, or an external body committed to providing these services to the bidder. Additionally, the financial adviser must have had experience of procuring finance for power and/or LNG-related capital projects of at least €400,000,000.

Figure 15: Marking scheme - Bidder's financial strength

Subject	Maximum points	Score description
Credit rating of the lead member	15	Three points per iteration above BBB+ based on S&P
Additional experience of the financial adviser	5	One point per relevant project
Total	20	

3.1.63 The Stage 2 and Stage 3 evaluations were to be performed by two separate and distinct legal, commercial, technical and financial teams with minimum practicable cross-membership, working independently of each other. Results were to be collated once all the individual stages were finalised, to ensure objective evaluations.

3.1.64 At Stage 4, Enemalta analysed the price proposals tendered by bidders. The Stage 4 evaluation was to be based on:

- a. the Lifetime Average Price of energy (LAP_e) supplied from the SPC's electricity facility per MWhe of electricity sold in accordance with the terms of the PPA;
- b. the Lifetime Average Price of gas (LAP_g) supplied from the SPC's gas facility per mmBTU of gas sold in accordance with the terms of the GSA;
- c. the Remaining Useful Life payment of the SPC's electricity facility (RUL_{CCGT}) beyond the duration of the PPA, expressed in millions of euro; and
- d. the Remaining Useful Life payment of the SPC's gas facility (RUL_{LNG}) beyond the duration of the PPA and the GSA, expressed in millions of euro.

3.1.65 The price evaluation was to model the energy and gas price structures set out in the PPA and the GSA, and was to assume that neither the SPC nor Enemalta would incur any financial penalties during operation. The RfP presented the variables, scenarios per variable and associated probabilities that were to be used in the evaluation model and provided as inputs to bidders. In addition, the RfP specified the PPA and GSA bid parameters that were to form part of the bidders' commercial offers.

- 3.1.66 The first criterion on which price proposals were to be analysed was the LAP_e , that is, the amount that, if charged per MWh_e delivered would recover, on a present value basis, exactly the amount of the capacity and energy payments made. The factors that were to determine the LAP_e were the availability and energy payments made and the electricity delivered. These were to be determined for each year of the PPA term and accordingly discounted by applying an Enemalta real discount rate. The resulting adjusted availability and energy payments, as well as the adjusted electricity delivered were to be aggregated for the term of the PPA. The derived payment was to be divided by the electricity delivered to give a euro LAP_e per MWh_e delivered (Appendix D refers).
- 3.1.67 The second criterion on which Stage 4 of the evaluation process was to be based was the LAP_g , that is, the amount that, if charged per mmBTU of gas delivered would recover, on a present value basis, exactly the amount of capacity and energy payments made. The LAP_g was to be determined by the availability and energy payments made and the gas delivered. These were to be established for each year of the GSA term and appropriately discounted by applying an Enemalta real discount rate. The resulting adjusted availability and energy payments, as well as the adjusted gas delivered were to be aggregated for the term of the GSA. The derived payment was to be divided by the gas delivered to give a euro LAP_g per mmBTU delivered (Appendix D refers).
- 3.1.68 The third criterion was the RUL_{CCGT} , which represented the payment that was to be made by Enemalta to the supplier for the remaining useful life of the SPC's electricity facility beyond the term of the PPA. In essence, the RUL_{CCGT} aggregated the capital payments that were to be made to the supplier after the expiration of the PPA term and up to the end of the useful life of the plant. The RUL_{CCGT} was to be determined through reference to the availability payments made, established for each year after expiry of the PPA term until the end of the useful life of the electricity facility. These availability payments were to be accordingly discounted to the end of the PPA term, that is, year 18, by applying an Enemalta real discount rate, and aggregated. The derived amount was to be further discounted to year 0 to take into account the delayed payment (Appendix D refers).
- 3.1.69 The fourth criterion was the RUL_{LNG} , which represented the payment that was to be made by Enemalta to the supplier for the remaining useful life of the SPC's gas facility beyond the duration of the PPA and the GSA. In sum, the RUL_{LNG} determined the capital payments that were to be made to the supplier after the duration of the PPA and GSA and up to the end of the useful life of the energy facilities. The LNG capacity payments were to be apportioned to the SPC's electricity facility and to the SPC's gas facility. In this sense, the RUL_{LNG} was to be determined through reference to the apportioned LNG capacity payments made, established for each year after expiry of the PPA term and the GSA term, until the end of the useful life of the gas facility. The apportioned LNG capacity payments were to be accordingly discounted to the end of the PPA and GSA terms, that is, year 18 in both Agreements, by applying an Enemalta real discount rate, and aggregated. The derived amount was to be further discounted to year 0 to take into account the delayed payment (Appendix D refers).

3.1.70 The components of the evaluation variables provided by Enemalta were:

- a. the inflation rate variables covering the various indices proposed in the PPA and the GSA, including the HICP;
- b. the Enemalta curves to be applied when predicting the effect of the bidder's proposal for indexation, including fuel price, carbon price and inflation rate; and
- c. a fixed Enemalta nominal discount rate of five per cent.

3.1.71 Bidders were to note that the data provided by Enemalta did not represent accurate projections but scenarios that corresponded to possible outcomes to enable a robust evaluation of the bids in terms of value for money and level of risk for consumers. In bids to be submitted, bidders were allowed to propose a proportion of various elements of the payments that were to be escalated in accordance with the HICP for the period between the closing date for submissions and the Effective Date.

3.1.72 The four indicators specified above, that is, LAP_e (€/MWh), LAP_g (€/mmBTU), RUL_{CCGT} (€) and RUL_{LNG} (€) were then to be converted into a single number for each bidder, expressed in euro per MWh, which was to be considered as the final price. The bidders' final prices were then to be ranked in ascending order, from the cheapest to the most expensive, and points assigned to each bidder. The points were to be determined as follows:

- a. the cheapest final price was to be allocated 100 points; and
- b. the other final prices were to be allocated points corresponding to the percentage difference between them and the cheapest final price (Appendix D refers).

3.1.73 At Stage 5, the results of the Stage 3 and Stage 4 evaluations were to be combined, utilising a weighting factor for each of the two stages. Stage 3 was allocated a weighting of 0.2 and Stage 4 was allocated a weighting of 0.8. The total points gained by each of the bidders at the two stages were to be combined to generate a final score. The bidders' final scores were to be ranked in descending order. The bidder with the highest final score was to be selected as the Preferred Bidder, while the bidder with the next highest final score was to be selected as the Reserve Bidder.

3.2 Clarifications to the Request for Proposals

3.2.1 Following the issuance of the RfP, bidders were provided with the possibility of submitting requests for clarification. According to the RfP, all queries and requests for clarification were to be submitted in writing, in the format specified therein, by not later than 6 September 2013. Enemalta was committed to reply to questions raised as early as possible, latest by 10 September 2013. Requests for clarification and Enemalta responses thereto were to be made

available to all bidders. Furthermore, for record purposes, a complete list of clarifications requested and replies thereto was to be provided to all bidders at the end of this process. The stipulated deadlines were revised by Enemalta on 12 September 2013 following additional clarifications issued to bidders. The final date for bidders to submit requests for clarifications was extended to 14 September 2013, while Enemalta was to provide responses thereto by 17 September 2013. Similarly, the bid submission deadline was extended to 20 September 2013.

- 3.2.2 In total, 160 clarifications were issued by Enemalta. The clarifications were varied in nature, mirroring the type of clarification requested. At times, clarifications were made in reply to queries or requests for additional information, while others addressed criticism or proposals relating to contractual changes submitted by bidders. Clarifications also varied in terms of themes addressed, such as the minimum functional specifications, changes in shareholding and securities that were to be provided.
- 3.2.3 Some clarifications served to rectify incorrect internal references or inconsistencies presented in the RfP noted by bidders. In one particular instance, a bidder noted inconsistencies in the gas storage requirements cited in various documents forming part of the RfP. In response, Enemalta amended the relevant clauses in the GSA and the PPA so that the fuel storage capacity quoted was to be equal to the LNG volume declared by bidders in their bid, rather than a volume in excess of 170,000 cubic metres as originally stated. Similarly, a bidder noted that while the Share Purchase Agreement specified a minimum amount and a time limit on liabilities in the event of a breach of representation, the IA did not. Following the flagging of this inconsistency, Enemalta removed the limitations specified in the Share Purchase Agreement. Similar clarifications related to information submitted by Enemalta regarding the expected format of RfP submissions and deadlines to be adhered to.
- 3.2.4 Other submissions by bidders were requests for clarification or for additional information relating to the RfP, the project specifications, the evaluation methodology or the contractual conditions. Clarifications also served the purpose of circulating additional information not originally included in the RfP. For example, following queries raised, bidders were informed that Enemalta was to pay for carbon dioxide emissions generated by the new plant subject to the plant's guaranteed efficiency, the use of LNG and a CCGT plant. However, in case of higher emissions, either due to changes in fuel or a decrease in efficiency, the increased cost was to be incurred by the SPC. Similarly, Enemalta informed bidders that the Preferred Bidder and the Reserve Bidder were entitled to carry out due diligence checks in relation to the sites to be leased to the SPC for the purpose of executing the project. This detail had not originally been included in the RfP. Enemalta also provided information about the MoU signed between Enemalta and Shanghai Electric Power, following queries raised by a bidder regarding whether this development would bear influence or consequence on the project. Enemalta indicated that Shanghai Electric Power was expected to acquire a minority stake in the Corporation and that details of the purchase agreement, which were at the time being drafted, were to be submitted to Parliament for approval. However, this agreement was to not have any impact on the PPA and GSA.

- 3.2.5 In certain instances, clarifications by Enemalta provided further explanations and examples, intended to clarify or interpret that already stated in the RfP or in the draft contracts. Clarifications addressed queries relating to the required format and content of the bid submission, site use, the evaluation methodology, the technical and functional specifications of the plant, financial details, relevant legal provisions and international protocols, as well as contractual provisions included in the Transaction Agreements, among others.
- 3.2.6 On the other hand, Enemalta did not favourably consider certain requests for additional information. In these cases, Enemalta either indicated that such information was to be made available to the bidder at a later stage in the process, or that the bidder was to infer this information from the documentation provided and through consultation with its experts. Alternatively, Enemalta noted that the information requested was not pertinent to the project. For example, Enemalta did not provide details regarding any pledges or encumbrances relating to the leased site, and instead indicated that the Preferred Bidder would be entitled to carry out due diligence. Similarly, Enemalta declined to provide details regarding the gas pipeline between Sicily and Malta, claiming that this was outside the scope of the RfP. Requested to indicate the standard operating conditions for the gas turbines, Enemalta directed bidders to the draft PPA and the Minimum Functional Specifications to determine these parameters.
- 3.2.7 Some requests for clarification were proposal-specific, relating to the suitability or otherwise of the proposed technical solutions. In these cases, Enemalta referred the bidder to the section in the RfP that outlined suitability and eligibility parameters. A case in point was a query raised by a bidder regarding the possibility of a barge-mounted power plant. In this respect, Enemalta clearly indicated that barge-mounted power plants were not acceptable under the RfP. The NAO noted that the reasons provided for this ineligibility varied between different clarifications issued. In one instance, Enemalta cited the project scope and the Minimum Functional Specifications as the source of this exclusion, while in another instance, the lack of an appropriate site for a barge-mounted plant was the basis for rejection, despite not excluding this option in principle.
- 3.2.8 Other requests for clarification represented attempts by bidders to obtain Enemalta's authorisation to deviate from the established plant specifications, or for changes to be made to the RfP process and contractual conditions. In most cases, Enemalta rejected these proposals and reiterated the specifications and conditions cited in the RfP. A common request by bidders was for the extension of deadlines relating to the RfP process, with bidders citing the voluminous RfP documentation and the insufficient time provided to prepare submissions as justification in this respect. These requests were consistently rejected by Enemalta, claiming that it was not in a position to grant extensions in view of its committed targets. Requests submitted in this regard were for an extension in the period within which proposals for changes in the composition of the bidding group were to be made, in the deadline for the submission of changes to the draft Transaction Agreements and in the bid submission deadline, among others. Nonetheless, the NAO noted that the bid submission deadline was revised at a late stage in the RfP process.

- 3.2.9 In a number of requests for clarification, criticism was levelled at the RfP process and the contractual conditions. In response, Enemalta sought to justify its stance by explaining the rationale behind certain procedures and contract clauses. By way of example, a bidder criticised the fact that the Preferred Bidder was expected to enter into a project worth over €500,000,000 over a span of around two decades without being provided with the opportunity to meet and discuss misunderstandings, clarify any queries and come to a mutual agreement on specific provisions, with Transaction Agreements of substantial volume negotiated only through email exchange. In reply, Enemalta indicated that it was subject to obligations emanating from the Treaty on the Functioning of the European Union (TFEU) when entering into certain contracts and that post-tender negotiations were subject to strict rules. In this context, Enemalta maintained that discussions on the text of the Transaction Agreements, and possible changes limited to eliminating misunderstandings and clarifying principles or text of the Transaction Agreements, were not excluded. Other criticism related to the fact that Enemalta limited its aggregate liability whereas the bidder was subject to unlimited liability in the Transaction Agreements, with the bidder claiming that this situation was unacceptable. However, Enemalta indicated that contractual conditions provided a limitation on the risks for the bidder that were not insurable, including delay liquidated damages and performance liquidated damages. Additionally, Enemalta argued that the possible damage that Enemalta was exposed to was much greater than that of the bidder in case of default on obligations by the bidder. On the other hand, an instance of criticism accepted and acted on by Enemalta related to the due diligence in respect of the leased premises that was to be undertaken by the successful bidder. In this case, Enemalta revised the relevant IA clause to address the valid concern raised.
- 3.2.10 In some cases, clarification notes were not preceded by queries raised by bidders but represented information circulated by Enemalta to elaborate on, correct or clarify details presented in the RfP, or served to notify bidders of updates in contractual clauses of the draft agreements. An example of an unprompted clarification issued by Enemalta to correct an error in the RfP related to the submission of multiple bids. Erroneously stated in the RfP was that an enterprise could act as a subcontractor to a number of bidders and bidding groups, provided that the enterprise did not form part of a bidding group, when in fact this should have read bidder. Similarly, Enemalta provided a clarification regarding the limitation on the use of two EPC contracts to manage the construction of the energy facilities specified in the RfP. Enemalta noted that this limitation was exclusive of the engagement of a civil works contractor, therefore, bidders were allowed to engage a third EPC contractor, provided that the scope of engagement was limited to civil works.
- 3.2.11 While the preceding paragraphs focused on the types of requests for clarification, with corresponding examples cited therewith, the ensuing paragraphs present a summary of the most salient clarifications organised according to theme.

Changes in Bidder

- 3.2.12 Various queries were raised regarding possible changes in the composition of the bidder, including whether it was permissible to effect changes in the consortium shareholding prior to the bid submission deadline or to add a new consortium member as a minority shareholder. Enemalta indicated that following the EoIC adjudication, it had granted bidders the right to propose such changes by 26 July 2013, and new compositions that fulfilled EoIC requirements had been accepted. Following this process, no changes to the composition, roles and principal relationships between the bidder members were permitted throughout the RfP. Similar queries were raised regarding the possibility of implementing changes of this nature following the tender award. Specifically, a query was raised regarding the possibility of the Preferred Bidder transferring its shares to another consortium member or a third party investor. Similarly, a query was raised regarding the transfer of shares to another consortium member or a third party investor following the acquisition of the SPC. In its reply, Enemalta explained that the Preferred Bidder was to acquire the shares of the SPC in accordance with the shareholding indicated in the RfP submission and subsequently enter into the Transaction Agreements. Any changes in shareholding following the signing of these agreements was to be regulated by the terms of the IA.

Project Scope

- 3.2.13 Another theme related to changes in terms of project scope, including the provision of a partial solution. Revisions in this sense were consistently refused by Enemalta. A bidder suggested the exclusion of LNG supply from the RfP framework, arguing that the proper evaluation of the proposed plant's competitiveness required Government to assume responsibility for the supply of LNG under a tolling agreement business model. The bidder claimed that this would allow for better project financing arrangements and project economics. Similarly, another bidder questioned why Enemalta was not considering the direct sourcing of LNG through a government-to-government supply chain. Another bidder proposed the exclusion of the construction and operation of the LNG storage and regasification facility from the project scope, proposing its assignment to a third party. In response, Enemalta reiterated that stated in the RfP, wherein it was indicated that the project was to be awarded to a bidder who offered a complete solution.
- 3.2.14 Other proposals by bidders relating to changes in project scope included the possibility of a dual fuel capability power plant, as opposed to the specified single fuel power plant, as well as the inclusion of the high voltage subsea system for the integration of the gas pipeline between Sicily and Malta within the existing electrical grid system in the RfP. These requests were not acceded to by Enemalta.

Financial Bid

- 3.2.15 In response to a request for clarification regarding whether the Brent Index was the only index that was to be considered by bidders in their price calculations, Enemalta indicated that bidders were to assume that the HICP, another component of the financial evaluation model, was subject to an annual inflation of two per cent. Similarly, following a query regarding the unit measurement of the Brent Index and the foreign exchange rate to be utilised, Enemalta noted that the base price for 2013 was quoted in US Dollars, and that conversion to euro was to be based on the exchange rate quoted by the European Central Bank on 20 September 2013.
- 3.2.16 Another bidder noted that, although the Brent Index cited in the RfP forecasted a gas price increase of 13.4 per cent between 2013 and 2020, the Intercontinental Exchange Brent Crude Futures quoted a price of \$112.78 per barrel for October 2013, going down to \$87.82 per barrel by February 2020, a backwardation curve that showed a price reduction of 28 per cent between 2013 and 2020. In this respect, the bidder requested Enemalta to consider updating the index cited in the RfP to reflect current market expectations to ensure more realistic financial models. Enemalta did not concede to this request, stating that the Index published in the RfP had been based on advice provided by its expert consultants and was to remain unchanged. Additionally, Enemalta noted that such indexing was to be used for evaluation purposes only and was to be applied uniformly across all the bids.

RfP Evaluation Methodology

- 3.2.17 A recurrent theme evident in various requests for clarification submitted by bidders related to the evaluation methodology that was to be employed. In some instances, requests for clarification necessitated the circulation of new information with regard to evaluation methodology. To this end, Enemalta circulated additional information regarding the assumptions that were to be used in the financial evaluation process. The information provided included values for the annual inflation rate, the Enemalta long-term nominal discount rate, the number of dispatched successful starts per year for the CCGT plant, the total hours in a year the CCGT plant was to be operating at 150MW, the CCGT yearly generation of reactive power outside the Minimum Functional Specifications, the forced outage rate, the gross capacity factors and the LNG plant flows for Delimara 3.
- 3.2.18 Enemalta also issued additional instructions regarding the evaluation of bids, specifically addressing the possible eventuality that the two top-scoring bidders obtained equal final scores. Enemalta indicated that bidders were to submit their best and final offer with their RfP submission, noting that no negotiations on price were permissible following the submission of bids. However, in the eventuality that the top-scoring offers obtained equal final scores at Stage 5 of the process, then the bidder with the lowest financial bid was to be selected as the Preferred Bidder. In the eventuality that both bidders had identical prices, then Enemalta reserved the right to request the bidders to propose a revised lower price. This process was to

be concluded once a bidder offered a cheaper price, which bidder would then be chosen as the Preferred Bidder.

3.2.19 Of particular interest was a proposal presented by a bidder for the exclusion of LNG supply arrangements from the bid evaluation process. The bidder claimed that the consideration of LNG supply as part of the evaluation method rendered this process speculative, noting that any LNG supplier would be willing to supply LNG to any of the prospective bidders. Additionally, the bidder argued that the requirement that an LNG supplier was to hold project equity was not an industry standard and it was in this context that the bidder considered comparison in terms of LNG supply as irrelevant. This request was not considered by Enemalta.

Financing and Guarantees

3.2.20 Queries were raised regarding progress registered by Enemalta in obtaining financing facilities from the EIB, a matter that was put forward in the RfP. A bidder criticised the delay in establishing financing terms with the EIB, claiming that this hampered negotiations with other banks and financial institutions, given that these could not compete with the terms potentially offered by the EIB. In this respect, the bidder requested Enemalta to indicate whether the EIB was likely to provide the required financing and, in the affirmative, on what terms. Guidance in this regard was sought as sufficient notice was required to permit bidders to prepare their financing submissions by the bid submission deadline. Enemalta informed the bidders that discussions with the EIB were still ongoing and that it could not guarantee the availability of financing from the EIB.

3.2.21 Although Enemalta considered adjusting the gas and power pricing formulas to account for the potential benefits of financing arrangements with the EIB, in such a way that both parties benefitted from this financing arrangement, this financing was not secured. As indicated by Enemalta, Government had been in contact with the EIB to establish whether the Bank would be interested in financing the project. Despite the Bank’s apparent interest in this regard, and Enemalta’s willingness to put bidders in contact with the Bank, there was no obligation on any bidder to procure financing from the EIB. According to Enemalta, no eventual bidder signalled any interest in pursuing this option for financing the project.

3.2.22 Another matter related to the issue of financing was the potential guarantees or securities that were to be granted by Government or Enemalta. Bidders enquired about the possibility that a sovereign guarantee from Government be granted with respect to the PPA and the GSA. Furthermore, enquiries were made regarding possible securities that could be obtained for Enemalta for the purpose of enhancing credit rating and facilitating project financing. In reply, Enemalta indicated that the project was to be backed by an SSA, pursuant to which Enemalta’s obligation to purchase electricity and gas would be assumed by Government in certain specified circumstances, such as those that would lead to the termination of the Transaction Agreements. Following queries raised, Enemalta amended the draft IA through reference to an SSA and the introduction of a clause stipulating that a letter of credit equivalent to the sale option fair value was to secure Enemalta’s obligations.

- 3.2.23 Although amendments made to the draft IA referred to an SSA and that a copy was to be appended to the IA, the NAO noted that the draft of the SSA was missing. This matter was brought up by a bidder through a request for clarification, enquiring when a copy of the SSA was to be provided. In reply, Enemalta stated that this Agreement was to be executed between the SPC and Government and that the Agreement would provide that Enemalta's obligation to purchase electricity and gas would be assumed by Government in certain specified circumstances. Nonetheless, the SSA was not circulated among bidders by the imposed deadline by when Enemalta was to reply to clarifications.
- 3.2.24 Concern by a bidder was expressed regarding the fact that the project was only feasible with financing, and that the Transaction Agreements constituted a major component of the risk assessment carried out by lenders. In this context, the bidder proposed a change to the Transaction Agreements such that their validity would be subject to the attainment of funds. This request was not acceded to by Enemalta, claiming that it was incumbent on the bidder to demonstrate the ability to secure funding. In this respect, Enemalta referred the bidder to the RfP, which stipulated that for each type of debt finance, the bidder was to provide confirmation that all relevant funds were to be committed, subject only to bid acceptance and to the conditions set in the Transaction Agreements.

Payments

- 3.2.25 A few requests for clarification dealt with payment considerations, with some bidders proposing changes to payment mechanisms and others querying the relevant details in the contractual agreements. Suggested changes to the payment structure, such as the inclusion of a bonus payment in the event that the energy facilities were commissioned prior to the scheduled delivery date, were not considered by Enemalta. Other clarifications circulated by Enemalta provided explanations regarding changes in the terms of payment, specifically the inclusion of a take-or-pay obligation in the revised draft of the PPA, which was introduced following a bidder's suggestion. Enemalta committed to an overall take-or-pay obligation equivalent to 85 per cent of the annual contract power that was to be supplied in terms of the PPA and 85 per cent of the annual contract quantity in terms of the GSA. Enemalta indicated that it retained the flexibility to compensate any shortfall in one of the Energy Agreements if the 85 per cent threshold was exceeded in the other Energy Agreement. The NAO requested Enemalta to indicate the basis for this revision; however, no reply was forthcoming.

The Special Purpose Company

- 3.2.26 Other important issues raised during the clarification phase related to the consideration for the transfer of the ordinary share capital of the SPC. One bidder suggested that the consideration of €30,000,000 should be revised based on a valuation to be undertaken by independent experts. This proposal was not accepted by Enemalta. Following queries by another bidder regarding

the basis on which the share purchase consideration was determined, Enemalta stated that the stipulated €30,000,000 was non-negotiable. This consideration was deemed a premium payable to Enemalta in return for entering into a long-term PPA and GSA, with securities in terms of payment commitments for defined levels of availability payments and minimum take-or-pay obligations as specified in the Transaction Agreements.

3.2.27 Additional information regarding the SPC, specifically in relation to any licences held and the terms of such licences, was sought. In response, Enemalta indicated that the SPC had been intentionally set up as such and was to be eventually transferred to the Preferred Bidder. In this respect, the SPC had only applied for the required development permits associated with the facilities to be installed for the purpose of fulfilling the obligations under the PPA and the GSA, and therefore did not hold any operational licences.

Commissioning Period

3.2.28 A request for change in the contractual conditions that was eventually accepted by Enemalta related to an extension in the commissioning period of the energy facilities. A proposal was put forward for the completion time of 18 months stipulated in the RfP to be limited to the operation of the power plant in an open cycle mode, with the steam facilities to be completed at a later stage. According to that stated, this change was requested based on industry and manufacturer information, which indicated that it was extremely challenging to reach full commercial operation for the combined cycle power plant in 18 months. The NAO’s attention was drawn to another clarification request wherein a bidder asserted that only used or stored equipment, which were not accessible on the market and which presented issues of quality and guarantee, were able to meet the delivery date due to the long lead time required for new turbines and engines. In this respect, in another clarification, Enemalta indicated that bidders were free to construct the power plant either using new components or using, in full or in part, used components. This was subject that all equipment adhered to the criteria set out in the RfP, the minimum functional specifications and any other specifications quoted in documents referred to in the RfP, including criteria relating to efficiency and emissions levels.

3.2.29 Enemalta initially refused the proposed change in the commissioning period, citing the unreliability of the open cycle mode. However, at a later stage, Enemalta consented to the revision of the commissioning period, accepting the postponement of the imposition of delay liquidated damages by four months, later revised to six months. This postponement in delay charges, as well as the postponement of the Last Energy Delivery Date, that is, the date by which the power plant was to be fully operational, was possible only if the plant, even if not completed, was in a position to provide a net electrical output and an energy availability of at least 150MW using natural gas as fuel by the scheduled energy delivery date. Changes were to be effected to the Transaction Agreements, or a separate agreement was to be drawn up, to reflect this concession. Furthermore, Enemalta indicated that the postponement was contingent on the following:



- a. availability payments were to be adjusted to reflect the difference between the tendered energy availability and the actual energy availability;
- b. energy payments were to be calculated using the same conversion factors used in the combined cycle mode;
- c. the SPC was to indemnify Enemalta for any losses, damages, additional costs and expenses resulting from such operation; and
- d. the annual contract power was to be reduced pro-rata to the net energy availability.

Delay Charges

3.2.30 A clarification constituted a seemingly unprompted revision of the delay liquidated damages contemplated in the Shared Responsibility Agreement¹⁰, which referred to charges that were due to Enemalta by the SPC in the event of delays in any of the scheduled delivery dates. The change resulted in higher daily delay charges in the event that the SPC became liable under both the PPA and the GSA, which increased from €50,000 to €100,000. Similarly, daily delay liquidated damages in terms of the PPA increased from €37,500 to €80,000, while those in terms of the GSA increased from €12,500 to €20,000. However, Enemalta capped the SPC's liability to pay delay liquidated damages to a maximum of €18,000,000 over the term of the Agreements. Previously, the SPC was liable to pay delay liquidated damages capped at €9,000,000 for each contract year.

3.2.31 When queried about this revision, Enemalta stated that delay liquidated damages related solely to lateness in the construction and development of the power and gas facilities, which could only occur in the first two years of the project and were tied to the Energy Delivery Date. According to Enemalta, if the project was delayed by more than six months, Enemalta had the right to terminate the Agreement at the Company's fault, which in turn would lose its equity. On reviewing the Agreement it transpired that the provision for charging delay liquidated damages over the lifetime of the project was illogical since these would not become applicable due to the termination clause. However, for the rest of term of the contract, Enemalta could levy performance liquidated damages on the basis of the average performance availability over a two-year period. The NAO deemed the explanation provided by Enemalta as reasonable.

Contract Termination

3.2.32 On expiry or termination of the Transaction Agreements, the SPC was to have the option to transfer its energy facilities to Enemalta. Following the Company's decision to proceed with this transfer, which Enemalta was under obligation to accept, an expert was to be appointed to

¹⁰ Although changes to the Shared Responsibility Agreement were proposed by bidders and accepted by Enemalta during the clarification phase of the RfP, it must be noted that the provisions of this Agreement were eventually incorporated into the IA.

determine whether the plant was certified or otherwise, and determine the facilities' state of repair. Negative appraisal would reduce the price of the energy facilities. More specifically, after considering the age and use of the facilities, the expert was to determine the expense required to bring the condition of the facilities to the expected standard as at the termination of the Agreements. This amount would be deducted from the price that Enemalta was to pay for the acquisition of the energy facilities if the SPC failed to implement the expert's maintenance and upgrade recommendations, necessary for the adequate operation of the expected usable life of the facilities. In this respect, a bidder proposed that the SPC be allowed to determine whether to proceed with the transfer following the expert's appraisal. However, Enemalta maintained that it would not allow the SPC to withdraw its intent to transfer the facilities following the expert's determination. On the other hand, Enemalta reassured bidders that the expert would be an independent expert appointed following mutual agreement between the parties. Additionally, Enemalta suggested that the SPC was to undertake its own assessment regarding the facilities' state of repair prior to making the decision to transfer. Moreover, the IA provided for yearly assessments that were to ensure that the facilities were maintained in certifiable condition.

- 3.2.33** Queries were raised with regard to the manner by which Enemalta was to acquire the energy facilities on the termination of the contract. Specifically, a bidder enquired whether Enemalta was to acquire the facilities through a share transfer arrangement. Enemalta informed bidders that the transfer of the energy facilities would not be undertaken by means of a share transfer, but, provided that the SPC opted to transfer its facilities and that these were duly certified, then Enemalta was to purchase the facilities directly.
- 3.2.34** Related to the termination of the Transaction Agreements were decommissioning costs. Enemalta notified bidders that the definitions relating to fair value calculations had been revised. These revisions were based on the principle that the SPC was to pay for decommissioning costs if it still owned the facilities at the end of their design life. These costs were to be recovered by the SPC at a linear rate over the design life of the facilities. If, on the other hand, the SPC transferred the facilities to Enemalta prior to their design life expiry, then the obligation to decommission the facilities and the incurrence of the related costs would shift to Enemalta. In this case, any amounts recovered by the SPC up to the asset transfer date in respect of anticipated decommissioning costs were to be taken into account in calculating the appropriate asset price to be paid by Enemalta for the facilities. In essence, Enemalta indicated that anticipated decommissioning costs collected by the SPC would be deducted from the amount payable by Enemalta.
- 3.2.35** Enemalta provided clarifications with respect to the provisions for the reimbursement of the share purchase consideration in terms of the Share Purchase Agreement in case of premature termination of the Transaction Agreements. Enemalta indicated that the value of the Share Purchase Agreement was to be amortised over the term of the contract and, in the event of a termination instigated by an Enemalta default, its residual value was to be included in the termination value. However, after proposals and queries in this regard, Enemalta stated that this purchase consideration was non-refundable, regardless of the cause for termination.

Enemalta noted that in the case of a premature termination of the PPA and the GSA, the only payments permissible were limited to those due for the transfer of the SPC's energy facilities, as specified in the IA, which were contingent on the SPC deciding to transfer the energy facilities to Enemalta. In this respect, bidders were to factor the cost of the non-refundable consideration payable for the acquisition of the SPC in their bids.

- 3.2.36 Elaborating on this matter in another clarification note, Enemalta assumed that the SPC would recover the relevant portion of the purchase consideration on contract termination, or through the exercise of the sale option on the expiry of the contracts. This assumption was based on a number of considerations. First, that the relevant portion of the purchase consideration was included by the bidder in the proposed sale option fair value, that is, the price to be paid by Enemalta to the SPC if on expiry of the Energy Agreements, the SPC opted to transfer the energy facilities to Enemalta. Second, that the bidder would effect a corresponding payment from the SPC to its shareholders, which payment would be financed similar to construction expenses, that is, through a blend of equity, shareholder loans and lender's debt. Third, was that the bidder would include a provision in its proposed Energy Availability Payments and in its Gas Availability Payments enabling the recovery of such costs. If these costs were to be amortised over the design life of the energy facilities, then the bidder would account for any unrecovered costs in the sale option fair value. Finally, that the bidder would account for the purchase consideration in the same way as construction capital costs for the purpose of calculating the fair value in any of the termination circumstances specified in the IA.

Other Issues Related to the Transaction Agreements

- 3.2.37 Following queries regarding the interpretation priority of agreements in the case of ambiguity, Enemalta asserted its agreement to establishing such a ranking, and that this was to be concluded prior to the execution of the Transaction Agreements.
- 3.2.38 A bidder enquired with respect to the bank guarantee that was to be submitted with the bid, specifically referring to whether the unconditional and irrevocable bank guarantee would be drawn if it was to propose deviation conditions to the PPA and GSA. At the time of this query the deadline for the submission of proposed changes to the Transaction Agreements had already elapsed, and Enemalta had already circulated the final set of revised Transaction Agreements drafts to bidders on 5 September 2013. In this respect, Enemalta indicated that if bids contained any material deviations from any of the Transaction Agreements, then the bid was to be disqualified in line with that specified in the RfP.
- 3.2.39 Queries were raised regarding the possible overlap of the bid bond and the performance guarantee, particularly in view of the timing of the signing of the Transaction Agreements and the issuance of the development permit. Enemalta noted that following the selection of the Preferred Bidder and Reserve Bidder, and the conclusion of the due diligence process in relation to the leased premises, the Share Purchase Agreement was to be entered into with the Preferred Bidder. The

Preferred Bidder was then to indicate the directors it was to appoint on the board of the SPC, and once these appointments were effective, the remaining Transaction Agreements were to be executed. The issuance of the full development permit was expected around mid-December, and therefore subsequent to the execution of the Transaction Agreements. Enemalta indicated that the overlap of the validity period of the bid bond with the date of the performance guarantee was intentional, such that the bid bond would be forfeited in the eventuality that the SPC failed to provide the performance guarantee as per the IA. The bid bond would be released when the SPC provided the performance guarantee. Enemalta indicated that it was not its intention to retain both the bid bond and the performance guarantee.

Site, Infrastructure and Permits

3.2.40 Various requests for clarification were raised with respect to the sites designated for the project, the use of existing infrastructure and the permits required in connection with the project. Queries raised included the relocation of a dolphin, which Enemalta was considering to undertake with other civil works. Other queries related to the relocation or redesign of existing general services at the site earmarked for the power plant, as well as the possible utilisation of the south pier for access to and maintenance of the power plant. With respect to the site services, Enemalta indicated that these were to be relocated, while authorisation to utilise the south pier was granted subject to Enemalta’s discretion. Queries relating to the permits required for the indefinite mooring of the FSU and/or the FSRU were also addressed by Enemalta, wherein it was indicated that no permits were required bar the first time notification of entry of the FSU and FSRU.

Alternative Fuel Supplies

3.2.41 Conditions relating to the use of alternative fuel supplies in periods of gas supply interruption, as specified in the Shared Responsibility Agreement, were the subject of a number of requests for clarification. Although resort to alternative fuel was contemplated in the Agreement, revisions were made which regulated the use of liquid fuel in such circumstances. Nonetheless, such use was at the discretion of Enemalta. Furthermore, Enemalta clarified that this change did not in any way limit the resort to alternative gas sources, which resort was permissible at any time without limitation, provided that the alternative gas supplied to Enemalta met the stipulated specifications. Queried as to why the SPC was to bear the fuel price difference, rather than both parties sharing the price difference on the basis of mutual agreement, Enemalta asserted that it would not permit any concession that would result in Enemalta bearing additional costs.

3.3 The Bidders’ Conference and the Environmental Impact Assessment

3.3.1 The RfP clarification process came to an end on 17 September 2013, which was the final date for Enemalta to respond to requests for clarifications. Bidders were allowed to submit clarification requests until 14 September 2013. While the RfP clarification process was underway, Enemalta held a bidders’ conference and convened another meeting to provide information relating to the EIA.

The Bidders' Conference

- 3.3.2 The bidders' conference was held on 2 August 2013, with the objective to provide an overview of the RfP, enable prospective bidders to familiarise with the sites and provide bidders with the opportunity to verbally seek clarifications on the procedure. Additionally, certain key decisions referred to in the RfP were announced during this conference. Bidders were notified that no negotiations on the terms and conditions were permissible during the conference, with the deadline to propose changes to the TAs having already expired. Information made available during the conference and interventions by bidders were recorded and circulated following the meeting. The NAO's reporting on the conference is based on the minutes circulated to bidders.
- 3.3.3 Bidders were advised that statements made were not in any way binding since decisions were to be sanctioned by the Programme Review Board. In this respect, bidders were notified that written clarifications were in all cases to prevail over other forms of communication, including verbal contributions expressed during the conference.
- 3.3.4 Communicated to the bidders was the overall vision of the project, the ultimate intended benefits, the scope and the overall business model of the project. Bidders were also provided with an overview of the RfP structure and the TAs. A map of the site was presented, with Site A earmarked for the CCGT plant, and a location close to Site B identified for the jetty, which site was to accommodate the FSRU and the vessel used for unloading the fuel. A preliminary risk assessment was carried out, with a view to identifying the optimal location for the FSRU/FSU, taking into account risk of life and security of life considerations. A boundary earmarked the safe distance required between the FSU and any vessel manoeuvring to serve the port. It was noted that the jetty was to serve as an intermediate point between the FSRU and the vessel through which fuel supplies were to be provided. A dolphin, at the time being used by Enemalta, was to be relocated.
- 3.3.5 During the bidders' conference, key announcements were made regarding the pre-development works that were to be undertaken by Enemalta, the SPC consideration, the LNG reference source, the guarantee and financing. Bidders were informed that the sites provided for the development of the energy facilities were to be leased as is, as Enemalta was not to carry out any pre-development works. Consequently, the successful bidder was to develop the jetty and undertake all foundation works required to install the facilities, essential in fulfilment of the PPA and the GSA. Since Enemalta was not to undertake the pre-development works, the consideration for the SPC remained €30,000,000.
- 3.3.6 Furthermore, Enemalta indicated that it had not secured an alternative reference source from whom bidders would have had the option to procure the required LNG, a consideration put forward in the RfP. In this respect, bidders were required to make their own provisions for accessing an appropriate source of LNG supply. In addition, Enemalta informed bidders that, following requests received for the inclusion of a guarantee, it was considering a number of options wherein the SPC's rights to operate the energy facilities and receive payment for the

energy and gas supplied would be secured in the event that Enemalta would be unable to continue procuring energy and gas.

3.3.7 Enemalta informed bidders that discussions with the EIB relating to the option to source financing, as referred in the RfP, had not been concluded. Bidders were informed that the EIB was carrying out its due diligence, which process was to be completed in the ensuing days and bidders were to be accordingly informed. Also outlined during the conference were the expected timeframes and deadlines for the EIA, the MEPA permit and the IPPC permit.

3.3.8 Cited in the minutes of the conference were the replies put forward by Enemalta to queries raised by bidders. The most salient points are presented hereunder:

- a. The SPC was to own all studies and permits, and was to be granted a PPA and GSA for 18 years for a consideration of €30,000,000.
- b. It was possible for bidders to propose either an FSRU or an FSU option.
- c. Bidders were allowed to propose a solution that considered the leasing of FSRU or FSU vessels already available on the market, if the minimum functional specifications were met.
- d. The project was intended to be a base-load plant, to be dispatched before any other plant. The PPA and the GSA were to include a take-or-pay obligation.
- e. The average load factor for Delimara 3 was 80 per cent. The projections of the operation of Delimara 3 and Delimara 4, as stipulated in the RfP, implied a lower load factor than that in effect.
- f. All liquidated damages were stipulated in the TAs.
- g. Transport Malta, the authority responsible for port operations, had been involved in the risk assessment process. It had been established that the FRSU/FSU would be moored for a number of years on the inner side of the jetty. Transport Malta was of the understanding that there was no major risk, nor did the risk assessment flag any major concerns. However, the logistics of the LNG carrier going into the port and its effect on the operations of the port, as well as the safety requirements of the LNG carrier were still subject to discussion.
- h. Although Enemalta’s efforts at engaging a potential alternative LNG source were still underway, bidders were to assume that they were to secure their own source of LNG.
- i. Storage of LNG was to be of a maximum of 180,000 cubic metres, which amount was established after reviewing existing and available vessels for potential storage and regasification, as well as considering the submissions received at EoIC stage.
- j. Two main permits were required for the project, that is, a development permit for the

construction of any permanent structures and an operational permit. According to MEPA, the FSRU and the FSU were deemed permanent structures. As at the date of the bidders' conference, a MEPA application for the development of the structure of the CCGT and the jetty had been submitted. Once the preferred bidder was selected, it was assumed that the details included in the bid would suffice for modifications to plans required in terms of the development permit. With regard to the operational permit, Enemalta already had a valid permit for its current operations and discussions were underway to determine whether a new permit or an amendment of the existing permit was required.

- k. For the site earmarked to accommodate the FSRU or FSU, the EIA was submitted without the inclusion of dredging; however, further studies were still ongoing.
- l. Dual fuel turbines were excluded by Enemalta. While Delimara 4 was to be exclusively gas fired, Enemalta reserved capacity on its plant, which was dual fuel fired.
- m. It was not compulsory for the LNG supplier to form part of the consortium; however, this was considered advantageous and in this respect, consortia having an LNG supplier as one of their members were to be awarded extra points.
- n. Enemalta did not have any legal obligation to dispatch the lowest cost facility first; however, in view of its commercial nature, Enemalta intended to dispatch the lowest cost plant first.
- o. The equipment that was to be installed in the gas plant and the power plant was to be compliant with all applicable regulatory requirements.
- p. Directive 2004/17/EC, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector, was not applicable to this competitive process.

Environmental Impact Assessment

- 3.3.9 Another bidders' conference relating to the EIA was held on 3 September 2013, following which minutes were circulated by Enemalta. The minutes made reference to a project description statement published on 4 June 2013, which statement had indicated three options for the LNG plant. According to Enemalta, the onshore option was eliminated since after a number of studies, it was concluded that the offshore option was the most feasible. By then, two development applications had been submitted to MEPA by Malta Power and Gas Ltd, one related to the CCGT and one that included the area at sea where works could potentially be carried out, with an outer zone dedicated for the jetty. The EIA was a key assessment required for the full development permit, and was submitted to MEPA by Enemalta on 2 September 2013.

- 3.3.10 The NAO sought to establish the basis of Enemalta's decision to resort to an offshore solution for the LNG storage facilities and requested the studies cited during the bidders' conference. Enemalta informed the NAO that this decision was not based on any studies carried out, but on the content of submissions made by bidders in reply to the EoIC. In the EoIC, there were no restrictions as to the technology to be proposed for the supply of electricity and gas to Enemalta, since the project was output based. According to Enemalta, all submissions received made reference to offshore storage (FSU or FSRU) and there were no proposals that put forward a solution which included onshore storage. It was on this basis that the RfP was issued relating solely to floating storage solutions for LNG, that is, through an FSU or an FSRU.
- 3.3.11 The NAO considered Enemalta's reference to bids as studies incongruent. Moreover, the NAO failed to understand Enemalta's assertion that all EoIC submissions made reference to offshore storage and that none of the submissions proposed solutions which included onshore storage. The Office's review of the EoIC evaluation report indicated that the bids submitted by Endeavor, Yildirim, Energy World and Med-Gas presented onshore LNG storage options.
- 3.3.12 Further elaborating on the matter, Enemalta asserted that Energy World and Med-Gas did not qualify to the RfP, while Endeavor was willing to consider both onshore and offshore options. Although Yildirim had proposed an onshore solution in its EoIC submission, Enemalta stated that the bidder's interest in an offshore solution was ascertained following enquiries therewith. Moreover, according to Enemalta, the technical consultants had advised that it would be best to limit the RfP to one solution. It was on this basis that Enemalta decided that the offshore solution would be opted for, particularly since most of the bidders had proposed such a solution. Enemalta maintained that the completion of the proposed solution in two years was more realistically achievable through an offshore solution, until a more permanent alternative would be developed.
- 3.3.13 Although the NAO acknowledges that the offshore solution was more readily achievable within the established timeframes, the various assertions made by Enemalta justifying resort to the offshore solution were factually incorrect. Moreover, reference to the minutes of the Programme Review Board provides contradictory information. During the Programme Review Board meeting held on 2 May 2013, the following was minuted, "The Board is expecting that, given the 18 month project timeline, the most probable technical solution would involve floating storage. The European Commission has a set of Best Available Techniques reference documents, which state that floating storage is not the best technique, and it is only considered unless the onshore option is demonstrated as not possible." With regard to the views expressed by Enemalta's technical consultants to limit LNG storage to one solution, the NAO noted the following in the Programme Review Board minutes of 13 May 2013, "The first issue is the onshore or offshore placement of the LNG infrastructure. According to the technical specialists the onshore option is better however the tight timelines almost certainly exclude this option." The decision to resort to an LNG offshore solution was already taken by 31 July 2013, when minutes of the Programme Review Board indicated that, "Further to last meeting's actions, DNV KEMA were requested to draft an estimate regarding the costs to place the FSRU in an offshore location."

- 3.3.14 The NAO enquired with the Minister MECW and the Chair RfP Evaluation Committee whether the decision to resort to an offshore solution was dictated by the 18-month timeframe for completion of the project. The Minister MECW provided an explanation as to why the offshore solution was preferred that was different to that stated by the Programme Review Board. According to the Minister MECW, this option allowed for quick reversal through removal of the FSU, deeming this option as having the least environmental impact. Furthermore, the Minister MECW indicated that removal of the FSU was possible once supply of gas was secured through the gas pipeline. On the other hand, the Chair RfP Evaluation Committee made reference to studies undertaken that considered the implications of offshore versus onshore storage facilities. Despite requests to this effect made to Enemalta, no such studies were made available.
- 3.3.15 The only study made available to the NAO relating to the assessment of various options regarding the location of the CCGT plant (Site A and Site B) and the gas facilities (onshore and offshore) was a cost benefit analysis undertaken by Nexia BT. The analysis was dated 9 August 2013, which was after the decision by Enemalta to limit submissions to the location of the CCGT plant at Site A and the FSU or FSRU to the offshore site, aptly captured in the Programme Review Board minutes cited in the preceding paragraph and the bidders' conference held on 2 August 2013. Therefore, in the NAO's opinion, the relevance of this analysis to the decision regarding the siting of facilities was negligible.
- 3.3.16 With regard to the EIA, Enemalta stated that this was based on a number of assumptions that could differ from the technical proposals submitted by the bidders. These assumptions were based on industry norms in line with advice received from experts. Bidders were advised that any significant departures from these assumptions would prolong the permitting process and would require an update to the EIA studies. A new bid form for the submission of design and proposal details was to be provided to enable Enemalta to identify such differences and update the EIA in the shortest possible time. Through the submission of the bid form, bidders would thereby indicate their consent to the onward transmission of their plans to MEPA. The bid form was to be submitted by the stipulated deadline of 16 September 2013.
- 3.3.17 Outlined in the minutes were the conclusions of the main studies carried out in terms of the EIA, including the study of water bodies, wave motion analysis, risk assessment analysis, as well as analysis of air quality and noise and the identification of mitigation measures. Also addressed in the minutes were queries raised by bidders relating to the infrastructure and the preferred LNG transfer method. It was noted that, after discussions with consultants, the preferred transfer method for the LNG was established as a jetty with an FSRU on one side and the LNG supply vessel on the other, though other options were still permissible. Furthermore, following the selection of the successful bidder, the SPC was to assume responsibility for the construction of infrastructure of the CCGT and the LNG.

3.4 Changes in Bidder and Bidding Group Composition

- 3.4.1 Stipulated in the RfP were provisions regulating changes to bidders and bidding groups subsequent to the EoIC process. According to the RfP, only bidders approved by Enemalta at the EoIC stage were eligible to submit a bid. In their bids to the RfP, bidders were to include only bidding group members approved by Enemalta at EoIC stage. However, the RfP provided for changes in the composition, roles and principal relationships between the members of the bidder, subject to the prior sanctioning by Enemalta. Approval was contingent on the bidder demonstrating to the satisfaction of Enemalta that, as a minimum, any departing member was replaced by a member with substantially equivalent or better skills or resources to the extent that such skills and resources were relevant to the bidder’s qualification. The eligibility criteria specified in the EoIC, as subsequently amended, were to continue to apply. Furthermore, any change in membership of a bidding group, or the inclusion within a bidding group of a member subsequent to the EoIC process would invalidate the relevant bid unless Enemalta had specifically authorised the change. According to the RfP, requests for changes in the bidding group composition were to be submitted by 26 July 2013, while Enemalta was to communicate its decision on the acceptance, or otherwise, of the proposed changes by 2 August 2013.
- 3.4.2 Clarifications with respect to changes in consortium membership were issued by Enemalta on 12 July 2013, whereby candidates were provided with instructions regarding information that was to be submitted in the event of such changes. Where a new member was to join a consortium yet none of the members were to exit, then Enemalta would only require the identity and role of the new consortium member. This was subject that all terms and conditions of qualification at EoIC stage remained unchanged, including the proposed shareholding in the eventual acquisition of the SPC and that the lead member remained unchanged. Should the introduction of the new consortium member, or the replacement of an existing member with a new member, affect the shareholding in the SPC from that proposed at EoIC, Enemalta required information relating to the revised composition as well as information that would enable Enemalta ascertain that the proposed consortium structure still fulfilled the requirements of the EoIC. Lead members of the consortium, as indicated at the EoIC stage, could not be substituted.
- 3.4.3 Notwithstanding the stipulated deadline, the EoIC Evaluation Committee was reconvened on 7 August 2013, tasked with the adjudication of proposed changes to the consortia of EoIC-approved bidders. The NAO established that no additional terms of reference were issued by Enemalta to the EoIC Evaluation Committee with respect to this task. Noted in the report drawn up by the EoIC Evaluation Committee was that the Committee was to recommend whether the consortia, now including the proposed changes in membership composition, qualified in terms of the minimum requirements established at the EoIC stage. Furthermore, in its adjudication, the EoIC Evaluation Committee was to consider the decision by the Programme Review Board that bidders would only be permitted to bid for the PPA and the GSA together and not for one or the other individually. Correspondence to this effect had been submitted to bidders on 3 June 2015, whereby bidders were informed of Enemalta’s decision to enter into a PPA and a GSA with a single candidate.

- 3.4.4 By the established deadline, 26 July 2013, six bidders submitted proposals to Enemalta for changes to the consortium. These requests were submitted by the ElectroGas Consortium, Daewoo Shipbuilding and Marine Engineering Company Limited (DSME), Vitol SA, Yildirim Energy Investments Inc., Soffiges Consortium and CPECC. With respect to each of the proposed consortium changes, the EoIC Evaluation Committee sought to determine eligibility in terms of the minimum criteria outlined in the EoIC as well as the Enemalta requirement for the submission of combined PPA and GSA bids. The NAO noted an element of inconsistency between that stated in the RfP and the analysis undertaken by the EoIC Evaluation Committee. Whereas the RfP cited possible changes to the bidding group, the EoIC Evaluation Committee limited its review to changes in bidders. While the bidding group included the bidder, the financial advisor, EPC contractors and the gas turbine manufacturer, the bidder solely comprised equity members. Notwithstanding this inconsistency, the NAO is of the opinion that this bore no impact on the evaluation process, for any changes to the bidding group were reviewed during the RfP evaluation process. Hereunder are the underlying conclusions and recommendations made by the EoIC Evaluation Committee on the basis of submissions received.
- 3.4.5 In its proposed submission, the ElectroGas Consortium indicated its preference to reserve the right for Gasol plc and Socar Trading SA to form part of the consortium as individual members, as opposed to the joint venture that had originally been put forward at the EoIC stage. The EoIC Evaluation Committee noted that the change in the relationship between Gasol plc and Socar Trading SA did not intrinsically alter the ultimate consortium composition as a whole, and that therefore such a change was acceptable. In addition, the ElectroGas Consortium proposed the inclusion of an engineering and design company, URS Corporation, in its list of potential EPC contractors, to support the consortium in the construction of the facilities. The EoIC Evaluation Committee observed that the EoIC did not entail an evaluation of the EPC contractors unless such contractors were shareholders in the consortium. Consequently, the Committee concluded that it had no reason to object to the inclusion of URS Corporation as an EPC contractor on the project. In sum, the EoIC Evaluation Committee recommended that Enemalta accept both proposed changes put forward by the ElectroGas Consortium.
- 3.4.6 DSME proposed changes to the fuel supplier and to the gas plant operator. The EoIC Evaluation Committee noted that the proposal submitted by DSME did not constitute a change in the ultimate shareholding of the consortium and therefore, as per provisions of the EoIC, did not require the Committee's approval. Notwithstanding this, the EoIC Evaluation Committee recommended the acceptance of the proposed changes submitted by DSME.
- 3.4.7 In its EoIC submission, Vitol had proposed a partial solution for the provision of LNG, which submission had been accepted at the EoIC stage on condition that Vitol develop an appropriate consortium with the right credentials to provide a complete solution. However, rather than forming a consortium, Vitol proposed having one company lead efforts relating to the RfP with other companies involved by means of term sheets. Vitol argued that this arrangement would allow for quick decisions to be taken during the RfP process. The EoIC Evaluation Committee agreed, on a majority basis, that the statement made by Vitol could not be considered as an

acceptable basis for qualification to bid for the PPA and the GSA. In essence, the Committee was of the opinion that Vitol had failed to form or identify a consortium with clearly defined parties holding the required qualifications and credentials to fulfil the requirements set out.

3.4.8 Yildirim requested authorisation for the inclusion of Tecnicas Reunidas, previously proposed as an EPC contractor, as an equity-holding member of the consortium with a 20 per cent shareholding. The EoIC Evaluation Committee considered the proposed change as one that effectively strengthened the consortium, since Tecnicas Reunidas' new involvement as an equity holding member was understood by the Committee as indicative of its greater commitment to the project. Consequently, the EoIC Evaluation Committee affirmed that it considered the proposed change acceptable.

3.4.9 Soffimat Gestamp proposed the inclusion of Klesch Group as part of its consortium. According to the EoIC Evaluation Committee, Klesch Group was a global industrial company that acquired commodity-producing companies and managed risk through commodity trading strategies. The EoIC Evaluation Committee observed that Soffimat Gestamp had failed to provide any information with regard to the Klesch Group; however, the Committee acknowledged that in view of the fact that Soffimat and Gestamp were to remain shareholders in the consortium, its evaluation of the suitability of the Klesch Group was not required. This conclusion was based on the understanding that Soffimat and Gestamp each retained a minimum shareholding of 20 per cent, in fulfilment of the requirements outlined in the EoIC.

3.4.10 In its EoIC submission, the CPECC proposed a partial solution relating to the PPA, and had been accepted to proceed to the RfP on condition that it offered a complete solution at RfP stage. In response, the CPECC proposed extending its consortium by including Shanghai Electric Power Co. Ltd and Wuhuan Engineering Corporation. The Consortium's proposed shareholding was revised as follows, the CPECC with 25 per cent, Shanghai Electric Power Co. Ltd with 55 per cent, and Wuhuan Engineering with 20 per cent. In addition, the China Development Bank was to act as the Consortium's financial adviser.

3.4.11 The EoIC Evaluation Committee noted that the financial and technical experience of the CPECC had been reviewed and evaluated during the EoIC process, and had been recommended to proceed to the RfP stage on the basis of the PPA submission. In this respect, no further evaluation of the CPECC as an individual member was required at this stage. Furthermore, a shareholding of 25 per cent was considered adequate and fulfilled the requirements set out in the EoIC and the RfP for the PPA.

3.4.12 According to the EoIC Evaluation Committee report, Shanghai Electric Power Co. Ltd was a large state-owned energy company with an asset base of around RMB 31.5 billion (equivalent to approximately €4,000,000,000), listed on the Shanghai Securities Exchange Centre, and involved in the production, construction and operation of electric and thermal power. The EoIC Evaluation Committee noted that although the Company's financial report indicated a AAA rating, no credit agency was specified in this respect. Moreover, the financial report cited a number of reference plants which were developed, owned, operated and maintained by the

Shanghai Electric Power Co. Ltd, including cases that operated solely on gas-fired technology. Although the EoIC Evaluation Committee deemed the profile of the Company acceptable and favourably considered its admission as part of the consortium, the Committee maintained an element of reservation with respect to whether the CPECC would remain the lead member of the consortium given the majority shareholding to be held by Shanghai Electric Power Co. Ltd. The EoIC Evaluation Committee noted that no evidence was provided regarding Shanghai Electric Power Co. Ltd's procurement of LNG or gas-supply capabilities.

- 3.4.13 The final member proposed by the CPECC to form part of its consortium was Wuhuan Engineering Corporation. This Corporation was fully owned by the Chinese Government and described as an engineering consulting, design and contracting enterprise specialising in the chemical, petro-chemical and medical industries. Although numerous references were provided, the EoIC Evaluation Committee noted that most of these were unrelated to the RfP. Notwithstanding this, two projects were considered relevant. While the first project was deemed acceptable by the EoIC Evaluation Committee, concerns emerged with respect to the second. In essence, the second project, which consisted of the development of an LNG terminal, was still under construction at the time of adjudication. The EoIC Evaluation Committee noted that the role of Wuhuan Engineering Corporation in this project was unclear, but more importantly, the project did not fulfil the requirements originally set in the EoIC, wherein it was specified that projects were to be operational by the EoIC submission date for eligibility in terms of evaluation. It was in this context that the EoIC Evaluation Committee did not consider the second project as part of the experience cited by Wuhuan Engineering Corporation.
- 3.4.14 In addition, the EoIC Evaluation Committee observed that the CPECC had failed to put forward any evidence of experience in the operation of LNG facilities and of its capability to manage an LNG supply chain from source to delivery. Moreover, the CPECC had also failed to indicate the source and procurement method for its acquisition of LNG for this project. On this basis, while the EoIC Evaluation Committee acknowledged that the CPECC had only qualified for the PPA at the EoIC stage, and that Shanghai Electric Power Co. Ltd qualified as a partner with adequate experience on the development and operation of gas-fired power plants, the Committee could not accept Wuhuan Engineering Corporation as a suitable member of the consortium, whose inclusion was therefore rejected. Consequently, the EoIC Evaluation Committee agreed, on a majority basis, that the CPECC Consortium failed to qualify for the provision of the PPA and the GSA, and that the inclusion of Wuhuan Engineering Corporation could not be accepted as a valid reference for the LNG element of the RfP.
- 3.4.15 The report compiled by the EoIC Evaluation Committee was presented to the Programme Review Board on 9 August 2013. According to minutes retained, the recommendations of the EoIC Evaluation Committee were endorsed by the Programme Review Board with instructions issued for bidders to be duly informed. Bidders were informed of the outcome of this appraisal on 9 August 2013.

3.5 Analysis of the Request for Proposals and the Clarifications Process

- 3.5.1 The NAO considered the RfP document as generally well structured and one that provided a sound basis for prospective bidders to commence preparation of their bid. Although concerns regarding the period of submission were expressed by bidders, the NAO deemed the time allowed for the submission of bids as adequate. The period for submission was of 76 days, which compares favourably with public procurement guidelines issued by the EC. The EC establishes an array of minimum time limits based on the nature and method of procurement, which range from 24 to 52 days.
- 3.5.2 The Office is of the opinion that the project was appropriately defined in the RfP, with the respective responsibilities and obligations of Enemalta and the selected bidder outlined in sufficient detail to allow for a proper understanding of what Enemalta sought to achieve through the project. This was complemented with project milestones that were to be achieved by specified dates. Moreover, Enemalta’s efforts to accelerate the process through the preparatory planning-related work undertaken was noted and commended by the NAO.
- 3.5.3 In the RfP, details regarding project financing were also appropriately sought and efforts at ascertaining the financial strength of bidders were made. Another positive aspect identified by the NAO was the inclusion of the main draft agreements, with bidders afforded the opportunity to propose changes to the draft agreements for consideration by Enemalta. Furthermore, details regarding documentation that was to be submitted by the bidders was clearly outlined and deemed comprehensive by the NAO.
- 3.5.4 In terms of evaluation, the NAO noted that the relative stages of assessment were outlined and criteria and sub-criteria that were to be utilised, as well as their respective weighting, were specified. Specific details on how marks were to be allocated on each of the sub-criteria were disclosed to bidders. The RfP process was designed in such a manner as to allow for bidders to submit requests for clarification. Bidders were informed that requests for clarifications and replies thereto were to be circulated among all bidders. The NAO considered these measures as contributing to the transparency and fairness of the procurement process.
- 3.5.5 The NAO deemed the RfP clarification process as managed by Enemalta as well-structured and documented. Timeframes for the submission of requests for clarification and replies by Enemalta were established at the outset, with queries restricted to written correspondence to a designated generic mailbox. Multiple requests for clarification were in fact submitted, with replies provided by Enemalta circulated among all bidders, ensuring transparency in the process. Replies were consistently provided in a timely manner, adhering to the timeframes indicated in the RfP. Based on the documentation made available to the NAO, clarifications sought were comprehensively addressed, with issues raised adequately resolved. The Office noted that, on occasion, Enemalta provided additional information that was not prompted by any specific request for clarification; however, these too were brought to the attention of all bidders. At times, feedback obtained from bidders enabled Enemalta to rectify any inconsistencies and address gaps identified in the RfP.

- 3.5.6 Notwithstanding this, the NAO noted shortcomings, mainly relating to major changes effected during the clarification process, such as the introduction of the SSA and revisions to the commissioning period. Another major change was in respect of the take-or-pay obligation. Other concerns related to the design of the project model, particularly the inclusion of LNG supply as part of the RfP framework and the requirement that LNG suppliers were to form part of project equity. Also of note were statements made regarding possible changes to consortia following tender award, which assume relevance in view of developments that occurred later on in the process.
- 3.5.7 Immediately evident to the NAO was the revision in the bid process timetable that took place close to the deadline for the submission of bids. The original timetable envisaged 6 September 2013 as the final date for bidders to submit requests for clarification and 10 September 2013 as the final date for Enemalta to issue clarifications thereto. Despite this, on 12 September 2013, Enemalta circulated multiple clarifications relating to various aspects of the RfP. As a consequence, Enemalta extended the deadlines for the final stages of the process by a few days, as indicated in Figure 16. Although an extension of the deadlines at that late stage in the RfP was not deemed ideal by the NAO, the Office considered this as having no material effect on the fairness of the process.

Figure 16: Changes to RfP bid process timetable

Stage	Original Deadline	Revised Deadline
Final date for bidders to submit requests for clarifications	6 September 2013	14 September 2013
Final date for response to clarification requests	10 September 2013	17 September 2013
Bid submission deadline ¹¹	16 September 2013	20 September 2013

- 3.5.8 Of interest to the NAO was the reply provided by Enemalta with respect to queries regarding the possibility of changes in the selected consortium following the award of contracts. Enemalta appropriately indicated that, following the signing of the Transaction Agreements, any changes in shareholding were to be regulated by the IA. In effect, when the ElectroGas Consortium sought authorisation regarding changes in its composition, Enemalta dealt with this request differently; however, this matter is addressed in section 9.2 of this report.
- 3.5.9 The NAO’s attention was also drawn to clarifications sought regarding the inclusion of LNG supply as part of the RfP framework. Three prospective bidders argued that the LNG component was to be excluded and assumed by Government or a third party, maintaining that this would allow for better project financing arrangements and project economics. One of the bidders contended that LNG supply was to be excluded from the RfP evaluation process as this rendered assessment speculative given that the same LNG supplier could provide LNG to all bidders. Moreover, the bidder claimed that it was not an industry standard for LNG suppliers to form part of the project equity.

¹¹ Bid Submission Deadline refers to the time and date by which Bids had to be received by Enemalta, as specified in the RfP, or any later time and date specified by Enemalta and communicated to Bidders

- 3.5.10 The NAO sought to establish the basis of Enemalta's preference to include LNG supply as part of the RfP framework, particularly in view of the concerns raised by the prospective bidders. Queries in this regard were addressed to the Minister MECW and Enemalta. The Minister MECW indicated that the rationale underlying this decision was the transfer of risk to the operator. The Minister MECW cited other benefits to having one contractor, with the complexity of managing all stages of the project, including considerations relating to interface, effectively transferred to the operator. Furthermore, the Minister MECW made reference to Enemalta's adverse financial position at the time, which precluded Enemalta from raising the required finance. Requests for documentation substantiating any analysis undertaken by Enemalta leading to the decision to only allow complete solutions at RfP stage, that is, integration of the LNG supply with the PPA through a GSA, remained unaddressed. The NAO sought the views of its technical advisor in this regard. With respect to the exclusion of LNG supply arrangements from the framework of the RfP or from the evaluation process, one could understand that a bidder might be only interested in supplying and installing equipment. The NAO technical advisor cited the tender for the BWSC plant as a case in point where bidders were not requested to include arrangements for the supply of fuel for the plant. On the other hand, the technical advisor acknowledged that Enemalta could opt for such arrangements to be declared in the bid if this was its preference.
- 3.5.11 Another matter for which the views of the Minister MECW were sought related to the concerns raised by bidders that it was not an industry standard for LNG suppliers to form part of project equity. The Minister MECW maintained that this structure again allowed for the transfer of risk, for responsibility for the whole value chain, from fuel supply, to shipment and scheduling, was borne by one operator. The Minister MECW also made reference to the fact that the gas was to be a shared service, utilised by the operator of Delimara 4 and Enemalta in the operation of its plant. On the other hand, the Chair RfP Evaluation Committee noted that under a scenario where LNG supply was separated from the provision of power, LNG suppliers would not accept liability for availability payments incurred by Enemalta arising from the PPA. As indicated in the preceding paragraph, documentation substantiating the assessment of risk undertaken by Enemalta was not made available to this Office. Nevertheless, the NAO technical advisor indicated that it was not the norm for suppliers of the fuel to be part of project equity.
- 3.5.12 The Office's attention was also drawn to clarifications relating to the issuance of a sovereign guarantee with respect to Enemalta in order to enhance credit rating and facilitate project financing, as well as in terms of the PPA and the GSA. According to Enemalta, the project was to be backed by an SSA, pursuant to which Enemalta's obligation to purchase electricity and gas would be assumed by Government in certain specified circumstances. Furthermore, a letter of credit equivalent to the sale option fair value was to secure Enemalta's obligations at the end of the contract term. The NAO noted that the SSA was not circulated among bidders. Although the concept of security in terms of the operation of the facilities and the generation of revenue was referred to in the bidders' conference, specific reference to the SSA was first made through an

amended draft IA circulated on 5 September 2013 and subsequently brought to the attention of bidders through clarifications issued by Enemalta on 12 September 2013, days before the bid submission deadline. A request for clarification had in fact been submitted in this respect on 26 July 2013.

- 3.5.13 According to Enemalta, although no reference to any form of state support was made in the EoIC, due to Enemalta's financial situation, bidders were requesting a state guarantee to ensure that the project would be seen through its term should Enemalta no longer be in a position to honour its contractual obligations. Notwithstanding that Enemalta indicated that this matter was to be considered at the RfP stage, the RfP was in fact issued without reference to any form of state support. Enemalta stated that, with bidders making demands for a state guarantee in order to make the project bankable, it became clear that unless some form of guarantee/support was provided by Government, the project was at risk, with the possibility of no bids being received. It was for this reason that, during the bidders' conference in August 2013, the concept of security of supply was announced to prospective bidders, with a view to providing sufficient comfort to bidders and to enable them to obtain the necessary financing for the project. Enemalta acknowledged that a draft of the SSA was not in place prior to the deadline for the submission of bids; however, the main principle behind the agreement, namely, that Government would step in for Enemalta in circumstances where Enemalta was unable to continue purchasing electricity and gas, was communicated to all prospective bidders in the bidders' conference and through a clarification issued.
- 3.5.14 The NAO maintains that the introduction of the concept of security of supply was a substantial change from that stated in the EoIC and RfP, which served to significantly reduce the risk to bidders. Furthermore, while the concept of security of supply was communicated to bidders at the bidders' conference, the Office noted that this was concretised as an SSA at a late stage in the bid submission process. Even then, bidders were not provided with a draft SSA, but this was merely referred to in the IA. It is in this context that concerns regarding the governance of the RfP process emerge, with the Office of the opinion that this significant factor ought to have been disclosed at the outset.
- 3.5.15 Not only was security of revenue ensured through the SSA, as the significant revision of take-or-pay provisions also guaranteed a minimum revenue to the selected bidder. Through these provisions, Enemalta committed to an overall take-or-pay obligation equivalent to 85 per cent of the annual contract power that was to be supplied in terms of the PPA and 85 per cent of the annual contract quantity in terms of the GSA. It is to be noted that, in the case of the GSA, a take-or-pay obligation was included at the outset; however, this was originally set at 65 per cent of the annual contract quantity. Reference to the extension of the take-or-pay obligation to the PPA was first announced during the bidders' conference.
- 3.5.16 The NAO is of the understanding that while the take-or-pay provisions ensured a minimum revenue to the selected bidder, the SSA provided further assurance that Government would step in instead of Enemalta in circumstances where the latter could not honour its obligations. These major changes, at this stage in the RfP process, were deemed by the NAO as a shortcoming

in terms of the governance of the procurement process. Although all bidders were informed of these developments, the nature of the changes and their timing drew the Office's concern, for they drastically altered the nature of the contractual relationship that was to be entered into, rendering the risk to revenue for the selected bidder inexistent. The risk was transferred in its entirety to Enemalta and Government, now obligated to purchase 85 per cent of the annual contract quantity, be it power and gas, irrelevant of requirements. Aside from considerations relating to risk, in the NAO's opinion, it was in Enemalta's interest to disclose all conditions favourable to prospective bidders in order to encourage competitive tension in the RfP, with relevant implications on value for money.

3.5.17 Also of note to the NAO was the fact that no reference was made to the Government Guarantee that was subsequently granted by Government a few months after the selection of the ElectroGas Consortium as the Preferred Bidder. The Government Guarantee and its implications on the procurement process are discussed in greater detail in chapter 10.

3.5.18 Another major change that occurred at a late stage in the RfP clarification process related to the extension in the commissioning period, with Enemalta accepting the postponement of the imposition of delay liquidated damages by four months, later revised to six months. Bearing in mind that the bid submission deadline was revised to 20 September 2013, the four-month extension was granted on 12 September 2013, while the additional two months were endorsed on 16 September 2013. This postponement in delay charges, as well as the postponement of the Last Energy Delivery Date, that is, the date by which the power plant was to be fully operational, was possible only if the plant, even if not completed, was in a position to provide a net electrical output and an energy availability of at least 150MW using natural gas as fuel by the scheduled energy delivery date. Although the change was effected within the permissible period, the NAO maintains that this constituted another significant change late in the bidding process, which compounds similar concerns highlighted in the preceding paragraphs.

3.6 Evaluation of Submissions – Request for Proposals

3.6.1 The evaluation of submissions received by Enemalta with respect to proposals for a PPA and GSA reflected the procedure outlined in the RfP. The objectives of the evaluation were to:

- a. provide a fair and transparent process through which the bids submitted by the consortia are analysed;
- b. ensure that consortia deemed capable and that have provided proposals in line with requirements qualify;
- c. ensure that consortia that have attributes beyond the minimum requirements are adequately rewarded; and
- d. ensure that the contract is awarded to a qualified candidate, which provides the best long-term average price to Enemalta.

3.6.2 The evaluation was structured in five distinct stages, namely:

- a. Stage 1 – Completeness: Administrative Requirements;
- b. Stage 2 – Minimum EoIC Requirements;
- c. Stage 3 – Commercial, Technical and Financial Evaluation;
- d. Stage 4 – Bid Price and Terms Comparison; and
- e. Stage 5 – Final Evaluation.

3.6.3 Four different committees were tasked with the evaluation of stages 1 to 4 (hereinafter referred to as the Stage 'n'¹² Evaluation Committee, as the case may be), each chaired by a Team Leader. The four Team Leaders, together with the Chair, formed the Stage 5 Evaluation Committee. All members on the various Evaluation Committees signed a declaration of impartiality and confidentiality.

3.6.4 In addition to the evaluation reports drawn up at each stage of the RfP evaluation process, bid reports for each bidder were drafted. In essence, the bid reports summarised the key conclusions arrived at by the various stage-based evaluation committees and were compiled by the Stage 5 Evaluation Committee. The NAO's presentation of the evaluation process is based on the evaluation reports prepared at each stage of the RfP evaluation; however, occasional reference is made to the bid reports in cases where additional information is provided therein.

Stage 1 – Completeness: Administrative Requirements

3.6.5 The opening of bids, pursuant to the RfP, was undertaken on 20 September 2013, that is, the bid submission deadline. This process took place at the Marsa Power Station, in the presence of Notary A and two Enemalta officials. Observing the opening of bids were the Chair of the EoIC Evaluation Committee, a Consultant Engineer engaged by Enemalta to provide project-related support services and members of the public and press.

3.6.6 The Notary certified that by the bid submission deadline, three bids had been received. The bids were numbered as follows:

- Bid 1: the bid submitted by ElectroGas Consortium;
- Bid 2: the bid submitted by Yildirim Energy – Tecnicas Power and Gas Consortium (hereinafter referred to as the Yildirim Consortium);

¹² Stage 'n' refers to the particular stage of evaluation under review.

- Bid 3: the bid submitted by Endeavor Energy, Exodus Crossing and BB Energy Consortium (hereinafter referred to as the Endeavor Consortium).

3.6.7 The opening of bids was recorded in a report drawn up by Notary B, designated as the Team Leader of the Stage 1 Evaluation Committee. Following the conclusion of this process, the re-sealed bids were delivered to the Delimara Power Station in the presence of two auditors from RSM Malta (hereinafter referred to as the RSM Auditors). Notary C confirmed the delivery of the three bids. All subsequent evaluations took place at the Delimara Power Station.

3.6.8 The Stage 1 Evaluation Committee, tasked with the review of the completeness of bids submitted, comprised Notary B, Notary C and the RSM Auditors. Appointment letters to the Stage 1 Evaluation Committee were issued on 19 September 2013, while declarations of impartiality were signed on 19 September 2013 and 20 September 2013. The terms of reference set for the Stage 1 Evaluation Committee were to:

- participate in the official opening session of the bids;
- officiate and certify the formal submission of bids by the consortia;
- carry out all checks necessary to verify the completeness of documentation submitted in accordance with the requirements of the RfP;
- issue requests to bidders to submit non-material missing documentation within the specified timeframes outlined in the RfP;
- certify those bidders who have complied with all the necessary administrative criteria (following an opportunity to rectify non-material missing documentation) in their bid; and
- hand over bid documentation to the respective evaluation teams.

3.6.9 The Stage 1 evaluation was carried out on 20 and 21 September 2013, with the procedure adopted as follows:

- the sealed boxes containing bids were opened;
- the original bid documents were inspected by the RSM Auditors in the presence of Notary C;
- a checklist of requirements in terms of the RfP was completed for each bid;
- a bid report was drawn up for each bid, outlining recommendations and annotations; and
- for each of the three bids, two copies of the completed checklist and bid report were signed by the RSM Auditors and Notary B or Notary C. One copy was enclosed with the original bid, which was re-sealed, while the other copy was deposited with Notary B.

- 3.6.10 Incomplete and absent bid forms, as well as missing information required in terms of the RfP were specified in the checklists drawn up by the Stage 1 Evaluation Committee. In the Stage 1 evaluation report, it was noted that while certain irregularities, such as the absence of a bid bond or missing bid forms, were relatively easy to identify, others were less so. Reference was made to the fact that all three bidders submitted generic statements in response to certain requirements of the RfP. In view of the technical nature of the information required, the Stage 1 Evaluation Committee could not conclusively determine whether this constituted an infringement in terms of bid completeness. Such instances were logged in the respective checklist and bid report, appended to the Stage 1 evaluation report, and were to be referred for legal or technical advice.
- 3.6.11 With regard to the bid submitted by the ElectroGas Consortium, the Stage 1 Evaluation Committee indicated various shortcomings. Some were deemed minor, relating to the format of the bid forms and appendices submitted. These included the omission of the authorised signatory in the letter of commitment and compliance, letters of commitment by the EPC and O&M contractors not including original signatures, the curricula vitae of team members exceeding the stipulated length and the incorrect naming of appendices. Deviations in the pro-forma letter of commitment that was to be issued by the gas turbine manufacturer resulted in the Stage 1 Evaluation Committee being unable to determine whether, irrespective of the format, the required content was included. In the case of the bid form relating to insurance requirements, the document submitted by the ElectroGas Consortium was in draft format and included tracked changes.
- 3.6.12 More substantial omissions were noted, with the ElectroGas Consortium failing to provide technical values or specifications and instead indicating that these were to be determined at the design stage. This shortcoming was noted in bid forms relating to the gas turbine and steam turbine generator, where the short circuit armature time constant was not specified. Similar shortcomings were noted in the bid form relating to the main connections and neutral earthing equipment, where details regarding impedance were not specified and in the bid form regarding low voltage switchgear, where details of fault ratings were not specified. Other cases included bids forms relating to the medium voltage switchgear, cables and the electricity supply service from the Enemalta facility.
- 3.6.13 The Stage 1 Evaluation Committee determined that legal advice was to be obtained with respect to the bid form relating to the letter of commitment and compliance, where the content of the letter was to be verified, and that relating to the EPC and O&M contractors' commitment so as to determine whether non-original signatures were acceptable. Referral for technical consultation was recommended by the Stage 1 Evaluation Committee in the case of bid forms relating to cables, to ascertain compliance with specifications, as well as with respect to the determination of gas turbine manufacturer commitment and insurance requirements. The NAO was unable to verify the legal and technical advice obtained as no documentation was retained in this respect. The Chair RfP Evaluation Committee informed the NAO that matters were discussed verbally as part of the consultation process. Noted in the ElectroGas bid report was that the submission was deemed as materially complete and therefore was to proceed to the subsequent stage of the evaluation process.

- 3.6.14 Similarly, the Stage 1 Evaluation Committee indicated various shortcomings in the bid submitted by the Endeavor Consortium, duly recorded in the relevant checklist and bid report. Some shortcomings, which related to the format of the bid forms and appendices submitted, were minor. For example, in the confidentiality undertaking, the date was only included on the front page and was missing on the page of signature. In addition, the proposal for the consolidated asset management services was not signed. The environmental impact assessment letter of compliance did not comply to the template provided, was not originally signed and was not printed on the letterhead of the lead member, as required. Additionally, some documentation, including agreements with potential LNG suppliers, as well as letters of commitment submitted by lenders, the floating storage supplier and the gas turbine manufacturer were not originally signed.
- 3.6.15 Of greater concern to the Stage 1 Evaluation Committee were missing documents, such as evidence of the commitment of the O&M contractor to the project, and those relating to the consolidated asset management services. Moreover, Schedule B of the IA and the schedule of insurance coverage were not submitted. Similarly, the instrumentation and control document, as well as the quality plan and quality assurance plan were not traced. In addition, documentation relating to certain aspects of design were not submitted. The Stage 1 Evaluation Committee noted that the Endeavor Consortium did not complete all bid form fields, and in cases the Consortium indicated that these requirements were to be determined at the design stage. Technical details relating to gaseous emissions, heat recovery steam generators, exhaust stacks and continuous emissions monitoring system equipment, the electrical facility cooling water system, the regasification system water use, fire detection and protection as well as turbine and switchgear-related matters, among others, were not specified in the bid.
- 3.6.16 The Stage 1 Evaluation Committee noted that certain administrative details were not specified in the bid submitted by the Endeavor Consortium. These related to the legal form and organisation of the bidder as well as the name of the manufacturer of the medium voltage switchgear. Finally, contrary to the bid report drawn up for the ElectroGas Consortium, the NAO noted that no specific reference to queries that were to be raised with legal and technical experts was made in respect of the bid by the Endeavor Consortium. Noted in the Endeavor Consortium bid report was that the standard text of the letter of commitment and compliance had been altered in order to include a number of reservations. These reservations were not reviewed or taken into consideration by the Stage 1 Evaluation Committee in its evaluation. Notwithstanding this, the bid submitted by the Endeavor Consortium was deemed to be materially complete and was to be considered for further evaluation in Stage 2 of the RfP.
- 3.6.17 The Yildirim Consortium failed to provide a number of key documents and important information. In particular, the Stage 1 Evaluation Committee noted that the Consortium failed to provide a bid bond, and did not indicate the price of gas per mmbTU as well as the commodity multiplier. The price of gas per mmbTU and the commodity multiplier were essential features in determining the price submission of the Yildirim Consortium under the PPA and the GSA. The matter was referred to the Committee's legal advisers, who expressed the view that the omission of these values was material in nature and that it was not permissible or justifiable to request their submission following the deadline of the RfP. Following the legal advice obtained,

it was recommended that the Yildirim Consortium be disqualified on the basis that it had failed to fulfil the Stage 1 requirements. The matter was referred to the Programme Review Board, wherein it was proposed that the Yildirim Consortium be disqualified. On 1 October 2013, the Programme Review Board approved the proposal and the Yildirim Consortium was accordingly informed. In this context, the bid by the Yildirim Consortium was not considered further.

- 3.6.18 The RfP stipulated that, in the case of administrative omissions, Enemalta was to allow bidders an opportunity to remedy any shortcomings within three business days from notification. Bids were to be rejected if such remedial action was not effected within the stipulated timeframe. In this respect, the RfP allowed for the Stage 1 Evaluation Committee to request bidders to submit any missing documents or information. The NAO was unable to establish whether requests for information by the Committee were made as documentation provided did not correspond to this stage of evaluation.

Stage 2 – Minimum Requirements

- 3.6.19 Following the elimination of the bid submitted by the Yildirim Consortium, the two remaining consortia that progressed to Stage 2 of the evaluation process were the ElectroGas Consortium and the Endeavor Consortium. In their original bids, bidders were requested to provide an overview of the proposed solution for the electrical and gas facilities in terms of the RfP. Figure 17 provides a comparative overview of the solutions proposed by the two bidders who progressed to Stage 2 of the RfP evaluation process, deemed useful in establishing context.
- 3.6.20 Stage 2 of the RfP evaluation process was to establish whether bids adhered to the minimum requirements of the RfP. The Stage 2 Evaluation Committee, set up to undertake this analysis, was composed of a Team Leader and six members. The Team Leader was a Partner with RSM Malta, and was duly supported by a Commercial Expert, a CCGT Technical Expert, an LNG Infrastructure Technical Expert, an LNG Supply Technical Expert and two Financial/Credit Worthiness Experts. The Commercial Expert and the CCGT Technical Expert were Consultants engaged with DNV KEMA, while the LNG Infrastructure Technical Expert was an Engineer employed with the Water Services Corporation. The LNG Supply Technical Expert was an employee of SGS Italia SpA, whereas the Financial/Credit Worthiness Experts were an Assistant Director employed at the MECW and an RSM Auditor. Letters of appointment to the Stage 2 Evaluation Committee were issued on 19 September 2013, and declarations of impartiality were signed on 19 September 2013, 25 September 2013 and 1 October 2013.

Figure 17: Comparative overview of bids

	ElectroGas Consortium	Endeavor Consortium
Power plant	The plant design was to consist of three gas turbines and one steam turbine, with a gross capacity of 215MW. The plant was expected to have an inherent reliability of 99.5 per cent, working at a combined cycle efficiency in excess of 54 per cent, with an estimated output of 1.811 million MWh per annum.	The plant design was that of a gas fired combined cycle power facility, with a net capacity of 220MW, consisting of two gas turbines in a two by two by one configuration.
Completion time	The completion time of the power plant to operate in open cycle gas turbine mode was set at 18 months. On the other hand, the plant was to be fully operational in combined cycle gas turbine mode after 24 months.	Completion time for the power plant to operate in open cycle gas turbine mode was set at 18 months. Operation of the plant in combined cycle gas turbine mode was to be achieved after 26 months.
Floating Storage Unit	An LNG carrier with a capacity of 126,340 cubic metres of LNG was to be chartered from General Dynamics American Overseas Marine. The LNG carrier was to be securely moored to custom designed and installed breasting dolphin structures, as well as a central unloading platform. The platform was to be directly linked to the planned onshore regasification site through a fixed jetty.	A single FSRU, of 138,100 cubic metres, was to be employed on a continuous basis, providing approximately 3 to 3.2 billion cubic feet.
Method of transfer	Ship to ship transfer	Ship to ship transfer
Regasification Unit	The regasification facility was to be located onshore, close to the jetty, which in turn was to be connected to the FSU. The planned regasification facility was to be a large structure, around ten metres high, 24 metres in length and six metres wide. The plant was to have a maximum operating capacity of 89,000 normal metre cubed per hour.	The regasification unit was to be located on board the FSRU, which in turn was to be moored to the jetty.
LNG Supply	LNG supply was to be provided directly by Socar Trading SA, which company was involved in gas trading and was a subsidiary of the Government of Azerbaijan.	A number of solutions were proposed with respect to the supply of LNG, namely: • a Henry Hub indexed LNG supply offered by Cheniere; • a five-year fixed price and a Henry Hub-based index offered by Morgan Stanley; • a five-year fixed price and a Brent-based index offered by Morgan Stanley; or • an 18-year Brent-based index offered by an unnamed reputable supplier.

3.6.21 The terms of reference of the Stage 2 Evaluation Committee were to:

- a. review and gain insight on all bids submitted as part of the RfP;
- b. review and reconfirm compliance of members of the consortia with the minimum qualifications requirements outlined in the EoIC and the RfP;
- c. review and ascertain compliance with the minimum functional specifications outlined in the RfP;
- d. review and ensure that no bidder was to be eliminated on grounds specified in the exclusion criteria outlined in the EoIC and the RfP;
- e. submit the necessary clarifications as may be required from the process;
- f. identify and certify bidders meeting and fulfilling all the minimum requirements outlined in the RfP;
- g. prepare individual reports on each bidder illustrating areas of compliance and non-compliance;
- h. prepare a consolidated report on the conclusions and findings; and
- i. recommend bidders qualifying for the third stage of the evaluation process.

3.6.22 The observations of the Stage 2 Evaluation Committee were recorded in separate reports, one for each bidder, signed on 9 October 2013. The reports presented the Committee's findings of shortcomings noted in terms of the minimum requirements, as well as additional remarks and proposed action. The Committee noted multiple instances of non-conformity with the minimum requirements in the submissions by the ElectroGas Consortium and the Endeavor Consortium. Certain instances were addressed through clarifications made by bidders following queries raised by the Committee. The Committee's consideration of clarification responses was noted in the Stage 2 evaluation report.

3.6.23 The NAO noted several instances of resolution through clarification. For example, in the case of the submission by the ElectroGas Consortium, the issue of unclearly defined roles, responsibilities and relationships of the sub-contractors was raised. Following a request for clarification, the ElectroGas Consortium provided a detailed description of its proposed organisation of EPC and O&M contractors. The additional information was considered as sufficient by the Committee and therefore, no further action was required. Similarly, clarifications were provided by the ElectroGas Consortium in response to queries raised by the Committee regarding the concentration of chlorine as an aqueous solution at the point of discharge. Other clarifications sought related to the years of experience of the O&M contractor. In both cases, the Committee deemed the additional information provided as sufficient and conclusive.

- 3.6.24 In the case of the Endeavor Consortium, the Stage 2 Evaluation Committee noted that the O&M contractor experience cited with respect to a particular project did not fulfil the minimum capacity requirement of 150MW. Following a request for clarification by the Committee, the Endeavor Consortium provided details of an alternative project that met the minimum requirements, which was considered conformant in terms of the RfP. Another clarification submitted by the Endeavor Consortium, following queries raised by the Committee, related to the certification of deliverables by a recognised certification agency. Clarifications were also sought with respect to missing documentation. For example, the Endeavor Consortium was requested to submit a letter of commitment by Excelerate Energy as O&M contractor, and the EPC term sheet agreement between the Consortium and METKA SA, which were duly submitted.
- 3.6.25 In certain cases, the Stage 2 Evaluation Committee sought legal advice. In one instance, legal advice was sought when discrepancies were noted between the wording of the template bank letter of support appended to the RfP and the actual letter submitted by the ElectroGas Consortium. In this respect, the Committee was advised that no further action was necessary. Legal advice was also sought in view of shortcomings in the assurance given by equity providers. The Committee noted that all the ElectroGas Consortium members, with the exception of Socar Trading SA, had failed to provide written confirmation that to the best of their knowledge, there were no facts or circumstances that could materially affect their cash flow from operations. Following legal consultation, the Committee decided that this shortcoming was not material, in view that the ElectroGas Consortium had qualified at the EoIC stage.
- 3.6.26 Other observations were resolved by the Stage 2 Evaluation Committee without sourcing additional information from bidders, through independent verifications undertaken. For example, the Committee noted that the soft copy submitted by the ElectroGas Consortium containing the financial statements of Siemens AG, the parent company of Siemens Financial Services, which was in turn the parent company of Siemens Project Ventures GmbH and held 20 per cent shareholding in the Consortium, could not be accessed. However, through reference to online data, the Committee was able to confirm that Siemens AG held a total equity in excess of €31 billion, as was in fact reported in the submitted bid form. Therefore, the Committee concluded that no additional submission was required by the ElectroGas Consortium. Another instance of non-conformity, resolved by the Committee through independent verification, related to the proposed design base shear submitted by the Endeavor Consortium. The Committee noted that, contrary to that stated in the Minimum Functional Specifications, which required the design base shear for plant structures to withstand earthquakes to be conformant with the UBC code, the Endeavor Consortium had proposed that the design be according to either the UBC code or EUROCODE. The Committee accepted the proposal by the Endeavor Consortium, concurring that the EUROCODE was a widely accepted standard. Similarly accepted deviations in the bid by the Endeavor Consortium related to the design features of the tappings and bolted links, environmental protection standards for switchboards, the installation design for certain switchboards, the voltage tolerance of equipment in the event of leakage and the earthing of cables, among others.

- 3.6.27 In certain instances, the Stage 2 Evaluation Committee indicated that no further action was required following its evaluation; however, in the NAO's understanding, these issues either remained unresolved or required rectification at contract stage. For example, in the case of the submission by the ElectroGas Consortium, the Committee noted that the wording of the banks' letter of support fell short of assuring a complete commitment to proceed with the funding of the project. This was in contrast to the RfP requirement as stipulated in the pro-forma bid form. While the Committee remarked that the bidder was to qualify only if the necessary financing was in place, the Committee contradictorily claimed that no action was required on this matter.
- 3.6.28 Other issues were left pending, with instructions for further action to be taken in the event that the bidder was selected as the preferred bidder. Certain shortcomings were identified by the Stage 2 Evaluation Committee as instances of non-compliance with the minimum functional specifications or deviations from the RfP requirements, whereas other shortcomings related to the provision of sufficient detail or the omission of required documentation. In some cases, the matter remained unresolved, with no clear action plan prescribed to address the highlighted issues.
- 3.6.29 Hereunder are the issues identified by the Stage 2 Evaluation Committee with respect to possible deviations from the RfP requirements, including variations from the minimum functional specifications or minimum commercial, legal and financial requirements, in the bid submitted by the ElectroGas Consortium, which remained pending:
- a. Bid Form 4.1 – Section 4: The submitted letters of support totalled €350,000,000, €20,000,000 short of the total long-term funding specified in Bid Form 17. The NAO noted that the €20,000,000 shortfall corresponded to upfront costs such as bank funding arrangement fees, pre-commissioning costs and insurance. Of the total project cost, 20 per cent was to be funded through shareholder loans, amounting to €70,000,000. Of note was the fact that Socar Trading SA, in its equity funding letter of commitment, indicated its ability and willingness to commit €40,000,000 as contribution, partly on its behalf and partly on behalf of Gasol plc, reflecting their respective stake in the Consortium. This was in line with the Joint Projects Development Agreement entered into by the parties. In its analysis, the Stage 2 Evaluation Committee commented that the bidder was to proceed subject to having all the required financing in place, and in this respect noted that the bidder was to confirm compliance with such a requirement.
 - b. Bid Form 9.1 – Appendix 22A & Appendix 22B: The documentation submitted, including technical drawings, raised doubts as to whether the ElectroGas Consortium had incorrectly assumed that all inlet and outlet streams were the responsibility of Enemalta. In this respect, the Committee clearly indicated that this was not in line with the RfP requirements and requested the Consortium to provide details of the battery limits and tie-in points with the existent Enemalta facilities, which were subsequently provided. Further to the submission by the ElectroGas Consortium, the Committee asserted that all the proposed pipe and cable routings and terminal points of the facilities would have to be discussed with the bidder if selected.

- c. Bid Form 9.1 – Appendix 22E: The ElectroGas Consortium proposed a reliability run of nine days, which was in contrast with that specified in the PPA, that is, a continuous 72-hour period followed by a 30-day reliability run under a variety of compliant dispatch conditions. This discrepancy was not addressed at this stage, and instead the Stage 2 Evaluation Committee noted that, if selected, Enemalta would have to discuss the details of the execution of the reliability run with the bidder. The NAO ascertained that this requirement was subsequently resolved through provisions stipulated in the PPA; however, the agreement reached did not reflect Enemalta's initial position. In fact, the PPA entered into between Enemalta and ElectroGas Ltd made reference to a continuous 72-hour period followed by a nine-day reliability run.
- d. Bid Form 9.2: In its submission, the ElectroGas Consortium proposed that the engineering, procurement and construction of the power plant would comply with the legislation in force at the date of the effective contract. In addition, the Consortium indicated that, where possible, it would also comply with any future legal requirements. However, the Consortium noted that new legal requirements could impact delivery times and cost, and that in this respect, cost and timeline variations would have to be agreed. On the other hand, the Stage 2 Evaluation Committee noted that according to the Minimum Functional Specifications, the energy facilities were to incorporate all recommended techniques to ensure compliance with existing EU and Maltese environmental requirements, and with any other legislation that could be expected to come into force in the near future. The Committee remarked that the bidder would charge the additional cost of compliance to future environmental requirements, if any, to Enemalta. Noted in the evaluation report was that Enemalta was to take a position on the materiality of this deviation.
- e. Bid Form 9.2: The ElectroGas Consortium asserted that it was open to design suggestions by Enemalta with respect to pipe schemes; however, maintained that any suggestions that were not consistent with cost effective and efficient design principles would necessitate contract variations. The Stage 2 Evaluation Committee noted that, as per the Minimum Functional Specifications, all pipe schemes and routing outside of the plant's designated site were subject to Enemalta's approval and that Enemalta reserved the right to change, at no extra cost, any pipe route or scheme in view of station constraints. The Committee remarked that any required pipe route scheme changes implied additional cost and time schedule risks. Additionally, the Committee noted some deviations between the project routing suggested by Enemalta and that proposed by the Consortium. Again, noted in the evaluation report was that Enemalta was to take a position on the materiality of this deviation.
- f. Bid Form 9.2: The ElectroGas Consortium indicated that if Enemalta required the bidder to provide for certain anticipated future NOX abatement, then specific design was required to allow for this measure. In its submission, the Consortium had not made any provision for future selective catalytic reduction (SCR). On the other hand, the Minimum Functional Specifications stipulated that should an SCR system not be installed downstream of the gas

turbines, then the heat recovery steam generator was to be designed in such a way as to allow the possibility of such installation to be made in the future. The Stage 2 Evaluation Committee noted that there was a risk of additional future expense and reduced temporary availability and capacity should such an installation be required. No clarifications were requested; however, the Committee noted that the Consortium was to confirm material compliance with this requirement.

The NAO sought to establish what efforts were made by Enemalta to ensure adherence with this requirement. According to Enemalta, the Minimum Functional Specifications as finally agreed with ElectroGas Ltd considered 70 per cent to 100 per cent power range as being normal operating conditions. Cited in the Minimum Functional Specifications was that, "Full compliance with the conditions of the admissible air pollution as stipulated by MEPA is required at 70 to 100% power range of each of the gas turbines of Delimara 4 and as otherwise stipulated in the IPPC permit." Enemalta noted that this in effect resulted in the non-installation of SCRs in the ElectroGas plant as NOX abatement was achieved through a different solution, that is, dry low NOX gas turbine combustors, which provided sufficient abatement. Moreover, Enemalta maintained that the remarks made by the Stage 2 Evaluation Committee in connection with Bid Form 9.2 were hypothetical and spoke of possible scenarios that would be brought about should more stringent emission requirements be requested in the future. Although the NAO deemed that stated by Enemalta as reasonable from a technical perspective, this remains contingent on whether emissions were in line with the stipulated limits, which verification was not undertaken by this Office as this was deemed outside of the scope of this audit.

- g. Bid Form 9.5: The Stage 2 Evaluation Committee observed that the implied energy density of LNG proposed by the ElectroGas Consortium was 19.35 mmBTU per cubed metre, which value was deemed low. The Committee indicated that no action was required at this stage of the process; however, noted that the exact characteristics of the gas were to be discussed if the bidder was selected. The NAO sought to ascertain developments on this matter. To this end, Enemalta indicated that agreement regarding the implied energy density of LNG was reached in April 2015 as documented in the Minimum Functional Specifications.
- h. Bid Form 11.1: The Stage 2 Evaluation Committee noted that the inlet and outlet streams proposed by the ElectroGas Consortium did not conform with the RfP requirements. The clarifications sought by Enemalta as per Bid Form 9.1, regarding the battery limits and tie-in points with the existing Enemalta facilities was considered by the Committee as relevant with respect to this issue. The NAO understood the Committee's stance when reviewing Bid Form 9.1, that matters were to be discussed among the parties if the bidder was selected, as also applicable in this case.
- i. Bid Form 11.6: The ElectroGas Consortium noted that the FSUs considered for conversion, in view of their age, deviated from stipulated requirements in terms of certain aspects of

design and potential redundancy items. Specifically, the Consortium sought dispensation with regard to certain items. The Stage 2 Evaluation Committee asserted that, if the bidder was selected, it was necessary to verify matters with the relevant classification agency as to whether the dispensation requested was acceptable and in line with regulations. When queried on the matter by the NAO, Enemalta stated that a condition precedent of the IA was that all necessary permits were to be in place before the Agreement became effective. This process was carried out by MEPA. Additionally, the Committee observed that contrary to the RfP requirements, the ElectroGas Consortium failed to specifically mention the redundant items despite acknowledgement of the redundancy concept in its bid. The Committee noted that such details were to be provided by the bidder if selected. Following queries made by this Office, Enemalta indicated that this matter was resolved through the inclusion of redundancy requirements in the Minimum Functional Specifications as agreed with ElectroGas Ltd.

- j. Bid Form 11.7: The Stage 2 Evaluation Committee asserted that the specified emissions were to be verified with the final EIA, in the eventuality that the ElectroGas Consortium was selected. In response to queries raised by the NAO on this matter, Enemalta noted that an Environmental Impact Statement was carried out on the project. Moreover, the Minimum Functional Specifications were fully agreed between the parties.
- k. Bid Form 11.7.1: The Stage 2 Evaluation Committee remarked that the carbon monoxide (CO) and NOX emissions for loads of 70 per cent of maximum continuous rating (MCR) and above were within the limits specified in the RfP. Additionally, the Minimum Functional Specifications did not state a minimum load for the daily average emission limit values. The Committee observed that the gas turbines proposed by the ElectroGas Consortium were incapable of achieving nitrogen dioxide emission values below the emission limit at loads below 60 per cent of the MCR. To ensure compliance with the Minimum Functional Specifications at lower loads, the electricity facilities required the installation of an SCR system, a feature not proposed by the Consortium. The Committee did not pursue this matter any further at this stage, noting that it was dependent on the outcome of the Environmental Impact Assessment.

Queries in this regard were raised by the NAO. Enemalta indicated that this issue had become irrelevant as the accepted Minimum Sustained Load of each turbine installed was determined at 70 per cent, resulting in emission limits at loads below 60 per cent as a matter no longer of concern. In addition, Enemalta made reference to the fact that the emission limits in the IPPC permit applied for normal operating conditions, which implied operation at or above the Minimum Sustained Load.

- l. Bid Form 11.9: The Stage 2 Evaluation Committee noted that the continuous emission monitoring system proposed by the ElectroGas Consortium did not comply with the requirements set out in the Minimum Functional Specifications. In this respect, the Committee noted that if the ElectroGas Consortium was selected, this issue was to be clarified to ensure compliance.

The NAO sought to determine compliance therewith. According to Enemalta's reply, the Minimum Functional Specifications were reviewed and fully agreed to jointly by ElectroGas Ltd and Enemalta. The Office confirmed adherence in this respect as the Minimum Functional Specifications for the electrical facilities included requirements for the continuous emission monitoring system.

- m. Bid Forms 13.2/14: The Stage 2 Evaluation Committee observed that the wording used by Siemens Industrial Turbomachinery AB, as the proposed gas turbine manufacturer, EPC supplier and O&M contractor, in its letters of commitment, varied from that stipulated in the pro-forma bid forms circulated at the RfP stage. Specifically, rather than confirming its involvement without reservation as required in terms of the RfP, Siemens Industrial Turbomachinery AB included a proviso whereby the parties were not to be legally committed to conclude the contract, allowing the termination of negotiations at any time. In this respect, the Committee asserted that the ElectroGas Consortium was to qualify subject to the commitment by Siemens Industrial Turbomachinery AB.

Following queries raised by the NAO, Enemalta sought to justify this inconsistency, stating that from a commercial point of view, a supplier would provide unreserved commitment to enter into a contract only against a deposit to reserve the manufacture of the turbines. As such, Enemalta maintained that Siemens Industrial Turbomachinery AB could only enter into a commitment with the ElectroGas Consortium once the Consortium entered into a contract with Enemalta. In addition, Enemalta indicated that the involvement of Siemens Industrial Turbomachinery AB, as the EPC Contractor, was emphasised in the Implementation Agreement, wherein the availability of an EPC Contract was a condition precedent.

- n. Bid Form 15: In the case of the submitted drawing illustrating an air and boil-off gas compressor, the Stage 2 Evaluation Committee submitted a request for clarification to the ElectroGas Consortium querying whether the natural gas in the boil-off gas was to be stored in a gaseous state, its volume and pressure. In reply, the ElectroGas Consortium indicated that it did not plan to store natural gas in its gaseous state, and that the boil-off gas compression equipment was intended to capture boil-off gas and feed it into the gas pipeline for dispatch to the power plants. Details regarding the natural gas supply pressure and the air compressors were also provided. The Committee commented that the clarifications presented by the ElectroGas Consortium addressed many of the queries raised; however, technical details were to be clarified if the ElectroGas Consortium was selected as the preferred bidder.

In reply to queries made by the NAO, Enemalta asserted that boil-off gas was not stored on site and that compressors pumped boil-off gas directly into the line feeding the Delimara 3 and Delimara 4 plants. Therefore, there was no onsite storage of natural gas in its gaseous stage and any boil-off gas generated was immediately sent for consumption. Enemalta contended that no further action was required, as the bidder had already provided technical clarifications.

3.6.30 Other issues noted by the Stage 2 Evaluation Committee with respect to the bid submitted by the ElectroGas Consortium related to insufficient documentation and detail, or specifications that were to be determined at a later stage:

- a. Bid Form 6(a): The Stage 2 Evaluation Committee considered the information provided regarding access to LNG supplies as insufficient documentary evidence. The Committee indicated that firm commitment was required on the signing of the contracts, if selected. Following queries raised by the NAO, Enemalta stated that ElectroGas Ltd was in possession of a signed LNG SPA before entering into the Transaction Agreements with Enemalta, which Agreement (LNG SPA) was a requirement for the Transaction Agreements to come into effect.
- b. Bid Form 10.1: The Stage 2 Evaluation Committee noted that the proposal by the ElectroGas Consortium to use hoses for the shore-to-ship transfers was to be discussed and confirmed depending on the layout of the jetty, if the Consortium was selected.
- c. Bid Form 10.5: The ElectroGas Consortium failed to specify a spare parts list for the steam turbine facility and the balance of plant facilities, and merely provided details on the procedure to be undertaken to select appropriate spare parts for the project. The Stage 2 Evaluation Committee noted that this was in contrast to the RfP requirement for details of the proposals for purchasing, control and maintenance of a suitable inventory of spare parts and operating supplies for contract and forced outages, as defined in the Energy Agreements. While no further information was requested from the Consortium at this point, the Committee noted that the bidder was to provide further details, if selected.

Following enquiries by the NAO, Enemalta noted that the procurement framework adopted necessitated that only minimal specifications of the plant were required, addressed in the Minimum Functional Specifications. Enemalta maintained that the procurement framework did not fall under the category of a public works contract and it was in this context that one was to consider the requirements included in Bid Form 10.5. Making specific reference to “details of the proposals for purchasing, control and maintenance of a suitable inventory of spare parts...” and “detail schedules of the consumables and spare parts to be stored...”, Enemalta contended that the inclusion of these in the RfP was meant solely to enable Enemalta to obtain a vision of the requirements necessary to satisfy the stipulated availability threshold. To this end, Enemalta deemed this requirement as not critical in nature.

- d. Bid Forms 11.14/11.15/11.16: The ElectroGas Consortium failed to specify the chosen manufacturer for the generator transformer, the unit transformer and facility redundancy components. The Stage 2 Evaluation Committee noted that, if selected, the Consortium was to provide manufacturer details.
- e. Bid Form 11.20: The ElectroGas Consortium failed to specify various parameters relating to the cables, noting that these were to be determined at a later stage during detailed design.



The Stage 2 Evaluation Committee observed that, while no action was required at this stage in the process, if chosen, the Consortium would require Enemalta's approval on the cabling specifications prior to the approval of the detailed design of the electrical connections.

- f. Bid Form 11.23: The Stage 2 Evaluation Committee noted that the ElectroGas Consortium did not commit to a specific manufacturer and did not indicate certain details relating to the electrical supply service from the Enemalta facility. The Committee accepted these omissions at this stage in the process; however, noted that, if selected, the Consortium was to clarify these omissions.

Further to queries made by the NAO, Enemalta stated that the specifications that were to be captured in Bid Form 11.23 were discussed and agreed to between Enemalta and ElectroGas Ltd as evidenced by the Electrical Connection Agreement.

- g. Bid Form 11.26: The ElectroGas Consortium did not provide organograms for all project teams, which omission was highlighted by the Stage 2 Evaluation Committee. The Consortium was to provide the missing documentation if selected as the preferred bidder.
- h. Bid Form 11.27: The ElectroGas Consortium failed to present a valid health and safety management systems certificate for the gas facilities, a requirement specified in the RfP. The Stage 2 Evaluation Committee remarked that evidence of such certification was to be provided by the Consortium in the eventuality of selection. In addition, the Committee noted that the Consortium had not submitted safety statistics for the O&M contractor that was to be engaged for the gas facility and that this shortcoming was to be addressed in the eventuality that the Consortium was selected as the preferred bidder.
- i. Bid Form 11.28(b)(c): The ElectroGas Consortium did not provide a detailed quality plan and a corresponding third-party risk assessment. In this respect, the Stage 2 Evaluation Committee asserted that the Consortium was to provide this missing documentation if selected.
- j. Bid Form 11.28(d): The Stage 2 Evaluation Committee observed that the ElectroGas Consortium did not nominate a third party to verify and certify the execution of works and noted that such a nomination was required if the Consortium was selected.

The NAO confirmed that the ElectroGas Consortium did nominate a third party to verify and certify the execution of works, entering into an agreement to this effect.

- k. Bid Form 11.29: The design scope, outlining the standards to be adhered to with respect to the gas facilities was not submitted by the ElectroGas Consortium. The Stage 2 Evaluation Committee noted that, if selected, the Consortium was to provide the requested design scope.

- l. Bid Form 15: The ElectroGas Consortium failed to provide the block flow diagram and elevation diagram with its bid, which drawings were required for the permitting process. The Stage 2 Evaluation Committee asserted that these drawings were to be provided by the Consortium if selected and subject to review by architects.
- m. Bid Form 18(a)(b): The Stage 2 Evaluation Committee noted that the insurance schedules submitted by the ElectroGas Consortium were preliminary. The Committee agreed that, while at evaluation stage the insurance did not have to be definitive, the Consortium was to provide evidence of adequate insurance cover at contract signing stage. Pursuant to queries raised by the Office, Enemalta confirmed that the Consortium addressed all requirements related to insurance cover as per the IA.

3.6.31 Aside from the observations made by the Stage 2 Evaluation Committee, the submission by the ElectroGas Consortium was also reviewed in terms of qualifications and capabilities, commercial requirements, technical requirements and contractual commitments, and reported on in the relevant bid report. With respect to the qualifications and capabilities of the Consortium, the bid report made reference to the fact that the Committee was required to assess whether the Consortium still qualified on the basis of the criteria outlined in the EoIC. Since the EoIC was primarily focused on assessing the qualifications and capabilities of the members of the Consortium in accordance with predefined criteria, the remit of the Stage 2 Evaluation Committee was limited solely to ensuring that the Consortium membership remained unchanged between the EoIC submission and the RfP submission, bar any changes approved by Enemalta. The procedure adopted was reliant on the premise that if the consortium remained unchanged, then the requirements specified in the EoIC were satisfied. On this basis, the qualifications and capabilities of the ElectroGas Consortium were deemed compliant with requirements.

3.6.32 With respect to the commercial requirements, the main shortcomings outlined in the ElectroGas Consortium bid report included the shortfall of €20,000,000 in the required total investment and limited evidence of firm commitment from suppliers to provide gas supplies during the term of the project. Cited in the bid report was that the €20,000,000 shortfall in the €370,000,000 investment, which was not properly sanctioned by the respective board of directors of the Consortium members, was the result of additional costs that were to be incurred following a last minute concession by Enemalta to allow operation of the power plant on open cycle mode for the first six months of operations. Despite these shortcomings, noted in the bid report was that the Stage 2 Evaluation Committee considered the Consortium as satisfying the commercial requirements subject to rectification by the effective date.

3.6.33 The NAO requested Enemalta to submit documentation put forward by the ElectroGas Consortium linking the €20,000,000 shortfall to the extended operation of the power plant in open cycle mode. In reply, Enemalta stated that all financing decisions were sanctioned by the Board of Directors of ElectroGas Ltd, specifically referring to minutes of a meeting held on 14 April 2015. The NAO is of the opinion that explanations submitted by Enemalta failed to

substantiate that cited in the bid report, that is, that the €20,000,000 shortfall was linked to the extended operation of the power plant in open cycle mode.

- 3.6.34 The NAO sought to ascertain whether Enemalta ensured compliance by the ElectroGas Consortium with the required total long-term funding of the project. To this end, Enemalta informed the NAO that the financing requirements for the project had increased from €370,000,000 to approximately €500,000,000, which investment was fully absorbed by the Consortium. By way of assurance, Enemalta provided this Office with a resolution by the Board of Directors of ElectroGas Ltd dated 14 April 2015, wherein the Transaction Agreements and the project, and hence its financing, was approved. The NAO deemed the submission by Enemalta a tenuous confirmation of compliance.
- 3.6.35 Minor technical deviations from the functional specifications were outlined in the ElectroGas Consortium bid report. Cited, among others, was the lack of provision for a future SCR and failure to reserve space for future abatement technology, if required. Noted in the bid report was that, while such deviations were minor in nature, the Stage 2 Evaluation Committee had proposed that the Consortium be required to comply with the relative requirements. In addition, a review of the technical designs submitted by the Consortium indicated that the CCGT plant was not to be housed in a shed. This was considered potentially problematic in terms of noise levels in the EIA. The Consortium had proposed the setting up of an Inter Technical Committee, between the Consortium and Enemalta, intended to precisely determine the technical details and design of the facilities, as well as to agree on a common action plan. Indicated in the bid report was that the Stage 2 Evaluation Committee concluded that the Consortium satisfied the technical requirements subject to the inclusion of provisions for the SCR in the plant designs. Additionally, if selected, discussions regarding appropriate measures to mitigate noise levels were warranted.
- 3.6.36 The bid report also highlighted issues relating to contractual commitments. In this respect, it was noted that the ElectroGas Consortium had submitted amended versions of the transaction agreements disseminated with the RfP. The Stage 2 Evaluation Committee did not review the proposed changes, and did not take into account these changes when evaluating the bid. Instead, the evaluation of the bid was based on the information provided in the bid forms annexed to the RfP.
- 3.6.37 The following issues were identified by the Stage 2 Evaluation Committee with respect to the bid submitted by the Endeavor Consortium, which issues remained pending at evaluation stage:
- a. Bid Form 4.1: In their letter of support, Denham Commodity Partners Fund VI LP and Denham Commodity Partners Fund VI LP-A confirmed their ability to fund the Endeavor Energy share of equity contribution. However, the Stage 2 Evaluation Committee noted that the correspondence included a clause that released the parties providing funding from any binding obligation and that, in the event that the Endeavor Consortium was selected, Enemalta was to ensure that adequate financing was in place.

- b. Bid Form 4.1: The letter of support issued by Citibank was in favour of Endeavor Energy's parent company. The Stage 2 Evaluation Committee noted that this was in breach of the RfP requirements, which required that letters of support be made to the consortium or the SPC. In this respect, the Committee asserted that while no action was required at evaluation stage, details were to be clarified if the Endeavor Consortium was selected.
- c. Bid Form 4.1: The Endeavor Consortium failed to provide confirmation that there were no facts or circumstances that would materially and adversely affect the equity provider's cash flow from operations. This information was a requirement of the RfP. The Stage 2 Evaluation Committee proposed that this omission be addressed in the event that the Endeavor Consortium was selected.
- d. Bid Form 4.2: The Endeavor Consortium highlighted a technical deviation from the Minimum Functional Specifications relating to conformance with codes and standards. Specifically, the Consortium noted that in the case of the boiler and pressure parts, it intended to use codes and standards set by the American Society of Mechanical Engineers rather than the requested European standards. The Stage 2 Evaluation Committee asserted that the Consortium was to proceed, subject to conformance with European standards or equivalent, and that further checks were to be undertaken in this respect.
- e. Bid Form 4.2: The Endeavor Consortium proposed the construction of certain facilities on the temporary facilities area, outside Site A. The Stage 2 Evaluation Committee was of the opinion that this deviation from the RfP was not acceptable, and that the Consortium was to confirm material compliance with this requirement.
- f. Bid Form 4.2: In its submission, the Endeavor Consortium proposed that the treatment and disposal of certain effluents was to take place outside the power plant, despite the fact that the Minimum Functional Specifications required the SPC to provide facilities and organise arrangements for the treatment and disposal of all wastes arising from the processes. The Stage 2 Evaluation Committee considered this as a deviation from the RfP requirements and requested that the Consortium confirm material compliance therewith.
- g. Bid Form 4.2: Whereas the Minimum Functional Specifications prescribed a requirement of full compliance with the conditions of admissible air pollution for the entire power range of the facilities, as stipulated by MEPA, the Endeavor Consortium noted that that the gas turbines could only operate as emission compliant within a specific load range. The Stage 2 Evaluation Committee observed that at lower loads, adherence to the emission limit level was not achievable, a common feature for most gas turbines with low NOX combustion systems. In this respect, the Committee recommended that Enemalta was to consider its position on the materiality of this deviation.
- h. Bid Form 4.2: The redundancy parameters specified by the Endeavor Consortium for the balance of plant deviated from the redundancy requirements stipulated in the Minimum

Functional Specifications. The Stage 2 Evaluation Committee proposed that, if selected, the Consortium was to provide a final list of redundant components.

- i. Bid Form 4.2: The Endeavor Consortium proposed using the existing self-cleaning sea water debris filters rather than installing a new system, as per the Minimum Functional Specifications. In this respect, the Stage 2 Evaluation Committee recommended that the Consortium, if selected, was to confirm material compliance with this requirement.
- j. Bid Form 4.2: The Endeavor Consortium proposed an insulation design for the chimney that deviated from the requirements set out in the Minimum Functional Specifications. The Stage 2 Evaluation Committee commented on this deviation, noting that the Consortium was to confirm material compliance with this requirement.
- k. Bid Form 4.2: The proposed ambient temperature of electrical equipment varied from the ambient temperature specified in the Minimum Functional Specifications. This deviation was not considered acceptable by the Stage 2 Evaluation Committee, stating that the Consortium was to qualify subject to acceptance of this requirement.
- l. Bid Form 9.5: The Stage 2 Evaluation Committee observed that the implied energy density of LNG was 26.6 mmBTU/m³ and 25 mmBTU/m³ s for the SPC's electricity facilities and Enemalta's facilities, respectively. The Committee noted the inconsistency in values and that both seemed high. In addition, the Committee expressed reservations with respect to the proposed contract stock, noting that this was not according to contractual obligations. In this respect, the Committee proposed that the exact characteristics of LNG and amounts of contract stock were to be discussed if the Endeavor Consortium was selected.
- m. Bid Form 10.4: The battery limits specified in the General Arrangement Plan were determined by the Stage 2 Evaluation Committee as not in line with the scope of supply.
- n. Bid Form 11.7: The Stage 2 Evaluation Committee noted that the proposed CO and NO_x emissions for loads of at least 70 per cent of MCR were within the limits specified in the RfP. The Minimum Functional Specifications did not specify a minimum load for the daily average emission limit values of CO and NO_x. The Committee observed that the gas turbines proposed by the Endeavor Consortium were incapable of achieving emission values below the limit at loads less than 60 per cent of MCR. To ensure compliance, at lower loads, with the Minimum Functional Specifications, the electrical facilities required the installation of an SCR, a feature that was not included in the Consortium's proposal. The Committee did not pursue this matter any further at this stage of evaluation, noting that it was dependent on the outcome of the EIA.
- o. Bid Form 11.7: The Stage 2 Evaluation Committee noted minor deviations in noise levels and recommended that the Endeavor Consortium provide further details if selected.

- p. Bid Form 11.7.2: The concentration of chlorine, as an aqueous emission, cited by the Endeavor Consortium, exceeded the threshold allowed by Enemalta. The Stage 2 Evaluation Committee noted that the Consortium was to provide further details if selected.
- q. Bid Form 11.8: The Stage 2 Evaluation Committee noted that the Endeavor Consortium amended the bid form relating to the suppliers of major equipment, allowing suppliers to obtain, source and supply equipment from other subcontractors and that Enemalta approval in this regard was not to be unreasonably withheld. The Committee considered this clause open to interpretation and proposed that the Consortium exclude reference to Enemalta therein. Moreover, the Committee remarked that the Consortium was to confirm compliance with this requirement.
- r. Bid Form 11.9: The Stage 2 Evaluation Committee noted a discrepancy in the cited capacity of the plant when comparing two documents. In the executive summary of the Endeavor Consortium bid, a total net capacity of 220MW was indicated. On the other hand, in the bid form relating to details of the electricity facility, a gross capacity of 240MW was cited. The Committee remarked that the performance details as provided in the executive summary were to be considered leading and recommended that, if selected, the Consortium was to verify that the capacity of the plant did not exceed the Minimum Functional Specifications.
- s. Bid Form 11.10.1: The Stage 2 Evaluation Committee noted that the sea water cooling demand indicated by the Endeavor Consortium exceeded the value, required by Enemalta, by 20 per cent. The Committee maintained that the Consortium was to commit to meet the EIA requirements, if selected.
- t. Bid Form 11.24: The Stage 2 Evaluation Committee noted that with respect to the time schedule for the electrical facilities, the Endeavor Consortium indicated that full capacity was scheduled for month 26, that is, two months after the Last Energy Delivery Date. The Committee indicated that Enemalta was to consider its position on the materiality of this deviation.

3.6.38 In its review of the bid by the Endeavor Consortium, the Stage 2 Evaluation Committee highlighted instances of insufficient documentation and detail, or specifications that were to be determined at a later stage:

- a. Bid Forms 4.2/9.1/10.4: The Endeavor Consortium failed to provide tender document drawings illustrating piping and cable routings, and cooling water lines. Despite clarifications requested, the Consortium failed to provide complete drawings, indicating that the General Arrangement Plan was provided as a preliminary layout and was not intended to show all final details of connections to the Enemalta facilities. However, the Consortium committed to conducting all the necessary engineering works in the event that it was awarded the contract, and this commitment was deemed sufficient at evaluation stage by the Stage 2 Evaluation Committee.

- b. Bid Form 4.2: The Minimum Functional Specifications prescribed the inclusion of an SCR or for the design of a heat recovery steam generator to allow for the possible installation of the SCR at a later stage. The bid by the Endeavor Consortium did not include an SCR system, but allowed for future installation thereof. The Stage 2 Evaluation Committee recommended that, if selected, the Consortium was to illustrate that sufficient provisions for the future installation of the SCR had been made.
- c. Bid Form 4.2: The Endeavor Consortium proposed that the individual items of the plant be controlled through independent control or protection systems, in accordance with the Minimum Functional Specifications. However, the Consortium also allowed for the possibility of an integrated control system. In this respect, the Stage 2 Evaluation Committee noted that, if the Consortium was selected, details regarding systems of control were to be confirmed.
- d. Bid Form 4.2: The Endeavor Consortium did not submit a draft turnkey contract for the construction of the gas facilities, although term sheets were provided indicating that Excelerate Energy LP was to act as the EPC contractor. The Stage 2 Evaluation Committee asserted that, prior to the date of effect, evidence of this commitment was to be provided.
- e. Bid Form 6: While the Endeavor Consortium presented letters by various LNG suppliers indicating interest in supplying LNG for this project, the Stage 2 Evaluation Committee noted that the evidence provided in this respect did not illustrate firm commitment. The Consortium was to confirm material compliance in this regard.
- f. Bid Form 9.2: In terms of the proposed functional specifications, the Endeavor Consortium committed to developing the entire project in accordance with relevant international and European standards. The Stage 2 Evaluation Committee proposed that the Consortium was to provide a list of the applicable standards, if selected.
- g. Bid Form 9.6: The Endeavor Consortium did not specify any relevant restrictions in the operation of the proposed electricity facilities. This lack of documentation was not addressed at evaluation stage and instead, the Stage 2 Evaluation Committee noted that details were to be discussed at a later stage, if the Consortium was selected.
- h. Bid Form 10.1: Despite clarifications sought, the Endeavor Consortium did not provide sufficient documentary evidence indicating that O&M procedures complied with the required international standards. The Stage 2 Evaluation Committee remarked that the relevant details were to be discussed if the Consortium was selected.
- i. Bid Forms 10.3/11.6/11.24/11.26/11.27/11.31: The Endeavor Consortium did not provide the name of the FSRU vessel, the redundancy data for the gas facilities, the time schedule for the gas facilities, the curricula vitae of personnel of several Consortium members, the previous site safety records and a signed letter confirming compliance to the EIA. The Stage

2 Evaluation Committee recommended that the Consortium provide this information, if selected.

- j. Bid Form 10.5: The details provided regarding procedures relating to spare parts and operating supplies were, in the Stage 2 Evaluation Committee's view, insufficient to determine their link to the overall project. Additionally, the Committee commented that it was unclear whether the lists of spare parts represented material that was to be stored at the leased premises. In this respect, the Endeavor Consortium was to provide additional details, if selected. Moreover, the Consortium was to proceed subject that it provided evidence of compliance with spare stock requirements.
- k. Bid Form 11.2: The attachment for the gas facilities was missing from the process flow diagrams. The Endeavor Consortium, if selected, was to provide the missing details.
- l. Bid Form 11.11: The Endeavor Consortium proposed that the fire detection and protection systems of the electricity facilities be connected to the existing Delimara system. The Stage 2 Evaluation Committee argued that sufficiency depended on the capacity of the existing fire fighting system and therefore, most of the requirements were still to be determined in this respect. Furthermore, the Committee noted that details were to be defined if the Consortium was selected.
- m. Bid Forms 11.12/11.14/11.15/11.16/11.18/11.19/11.20/11.21: The Endeavor Consortium did not specify the values for additional equipment parameters, indicating that these would be determined during detailed design stage, in accordance with the International Electrotechnical Commission requirements. Similarly, the Consortium failed to specify the manufacturer of certain supplies. The Stage 2 Evaluation Committee noted that the Consortium was to provide the necessary details, if selected.
- n. Bid Form 11.25: The Stage 2 Evaluation Committee considered the project management procedures presented by the Endeavor Consortium as generic and lacking in detail. Additionally, the Committee noted that the role of Metka SA, the electricity facility EPC contractor, was unclear. Details were to be provided in the eventuality that the Consortium was selected.
- o. Bid Form 11.32: The Endeavor Consortium indicated that, while the tests performed prior to the Energy Delivery Date and the Gas Delivery Date were to be executed according to mandatory EU Directives, further tests were to be performed as per the standard manufacturing processes stipulated by its suppliers. The Stage 2 Evaluation Committee proposed that test procedures were to be discussed if the Consortium was selected.
- p. Bid Form 12: The Stage 2 Evaluation Committee observed that the lenders' letters of commitment were in effect letters expressing interest, with no formal commitment provided. Moreover, the letters failed to specify the proportion of the loan that was to be underwritten. In this respect, the Committee suggested that evidence of financing was to

be provided by the Endeavor Consortium in the event that it was selected. Additionally, the Committee advised that details relating to the underwritten portion of the loan and the lenders due diligence checks were to be concluded following selection.

- q. Bid Form 16: The Stage 2 Evaluation Committee noted that the Endeavor Consortium cited different timeframes for the on-site delivery of the steam turbine generator in different bid forms. While no action was considered necessary at this stage of the process, the Consortium was to formalise an exact schedule if selected.

3.6.39 In its review of the submission by the Endeavor Consortium, the Stage 2 Evaluation Committee noted certain shortcomings for which no proposed action was recommended. Specific reference is made to the lack of clarity regarding the number of main cooling water pumps and that the quality management certificate provided by Metka SA, the electricity facility EPC contractor, was valid only until May 2015.

3.6.40 The bid by the Endeavor Consortium was also evaluated to determine compliance in terms of qualifications and capabilities, commercial requirements, technical requirements and contractual commitments, which analysis was duly reported in the relevant bid report. With respect to the assessment of qualifications and capabilities, the bid report made reference to the fact that the Stage 2 Evaluation Committee was to assess whether the Consortium still qualified on the basis of the criteria outlined in the EoIC. Since the EoIC was primarily focused on assessing the qualifications and capabilities of the members of the Consortium in accordance with predefined criteria, the remit of the Stage 2 Evaluation Committee was limited solely to ensuring that the Consortium membership remained unchanged between the EoIC submission and the RfP submission, bar any changes approved by Enemalta. The procedure adopted was reliant on the premise that if the consortium remained unchanged, then the requirements specified in the EoIC were satisfied. On this basis, the qualifications and capabilities of the Endeavor Consortium were deemed compliant with requirements.

3.6.41 One minor commercial issue reported in the bid report related to the insufficient detail provided with regard to arrangements for the acquisition of sufficient quantities of LNG. According to the Endeavor Consortium bid report, the Stage 2 Evaluation Committee resolved that the Consortium satisfied the commercial requirements, subject to the provision of details associated with LNG supply arrangements prior to the effective date. However, in reply to queries made by the NAO, Enemalta indicated that no discussions were entered into with the Endeavor Consortium since the contract was awarded to the ElectroGas Consortium.

3.6.42 The following minor technical deviations were cited in the bid report:

- a. the lack of an SCR, though it was acknowledged that provision was to be made for its future installation;
- b. project completion in combined cycle mode in 26 months, instead of the requested 24 months, with the financial model presented by the Endeavor Consortium taking into account two months of delay charges to be paid to Enemalta;

- c. workshop, laboratory and storage building to be located in the temporary facilities area, rather than the designated location at Site A;
- d. use of additional areas beyond the limits of Site A, with a requirement to demolish and relocate existing buildings to other areas;
- e. no plan to install or replace existing self-cleaning filters;
- f. chimneys to be insulated only up to the area where personnel would have access;
- g. minor discrepancies in the design ambient temperatures of the plant; and
- h. failure to identify optional manufacturers for some major equipment.

3.6.43 As noted in the bid report, the submission by the Endeavor Consortium was subject to a number of reservations in relation to the Transaction Agreements. The Stage 2 Evaluation Committee did not review these reservations or take them into account when carrying out its evaluation; instead, the evaluation was based on information provided in the bid forms submitted.

3.6.44 In conclusion, the Stage 2 Evaluation Committee resolved that the submissions by the ElectroGas Consortium and the Endeavor Consortium were materially compliant with the minimum requirements set out in the RfP. Nonetheless, a number of issues were highlighted for consideration by the Programme Review Board, namely that:

- a. both bidders did not take into account the installation of specific abatement equipment that could have been required in the future;
- b. both bidders made a number of reservations in the Transaction Agreements; in fact the ElectroGas Consortium submitted the set of Transaction Agreements annexed to the RfP with proposed track changes. These deviations were not taken into account for the purpose of the evaluation;
- c. the Endeavor Consortium presented plans that proposed the use of land outside that designated in the draft Site Lease Deed;
- d. the Endeavor Consortium proposed a full completion schedule for CCGT operation of 26 months, instead of the period of 24 months allowed by Enemalta; and
- e. the ElectroGas Consortium approved a total investment of €350,000,000, as opposed to the €370,000,000 investment required. This €20,000,000 shortfall was the result of a concession made by Enemalta to allow consortia to commence operation in open cycle mode after 18 months, which the Consortium estimated as resulting in an initial loss of €20,000,000.

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- 3.6.45 Subject to the above conditions being acceptable to Enemalta, and subject to a proviso that the selected bidder was to accept all the material conditions imposed by Enemalta through the Transaction Agreements, the Stage 2 Evaluation Committee recommended that both bidders be considered for the ensuing stages of the evaluation process.

Stage 3 – Commercial, Technical and Financial Evaluation

- 3.6.46 Stage 3 of the RfP evaluation focused on the additional technical, commercial and financial capabilities of the bidders. The Stage 3 Evaluation Committee was composed of a Team Leader and five members. The Commissioner for Revenue was assigned the role of Team Leader, while the other members were two Technical Experts on CCGT, a Technical Expert on LNG Supply, a Technical Expert on LNG Infrastructure and a Commercial Expert. The two Technical Experts on CCGT were Consultants engaged with DNV KEMA, while the Technical Expert on LNG Supply was an employee of SGS Italia SpA. The Technical Expert on LNG Infrastructure was the Chief Officer Energy Policy within MECW, while the Commercial Expert was employed as Head Advisory Services at Nexia BT. The NAO noted that the Technical Expert on LNG Supply was also a member of the Stage 2 Evaluation Committee. One of the team members was also a member of the Stage 2 Evaluation Committee. Letters of appointment were issued to the Stage 3 Evaluation Committee on 19 September 2013, and declarations of impartiality were signed on 23 September 2013 and 25 September 2013.
- 3.6.47 The objective of the Stage 3 Evaluation Committee was to review the bids submitted by the ElectroGas Consortium and the Endeavor Consortium and assign points for instances where the minimum requirements were exceeded, in accordance with the scoring system specified in the RfP. More specifically, the Stage 3 Evaluation Committee was tasked with:
- a. reviewing and gaining insight on all bids submitted as part of the RfP;
 - b. reviewing and evaluating the additional capabilities of bidders over and above those outlined as minimum requirements and scoring each bidder on the basis of the mechanism outlined in the RfP;
 - c. reviewing and evaluating the additional functionalities and technical specifications provided by bidders over and above the minimum requirements and scoring each bidder on the basis of the mechanism outlined in the RfP;
 - d. submitting the necessary clarifications as may be required;
 - e. determining and computing the final score for each bidder according to the score criteria stipulated in the RfP;

- f. preparing individual reports on each bidder, illustrating the underlying reasons for the scores allocated to each bidder; and
- g. preparing a consolidated report on the conclusions and findings.

3.6.48 In Stage 3 of the evaluation process, bids were to be reviewed, evaluated and scored on the basis of their commercial, technical and financial strength, specifically considering the degree to which bidders exceeded the minimum requirements assessed in Stage 2. The technical and financial strength of each bid was to be determined through reference to four criteria, that is, the bidder’s additional experience in electricity facilities, the bidder’s additional experience in gas facilities, matters relating to energy and gas delivery, and the bidder’s financial strength. In turn, each of these criteria were further disaggregated into specific sub-criteria. A detailed scoring method, outlining the scores to be allocated for each particular characteristic was communicated to bidders at RfP stage, as outlined in paragraphs 3.1.58 to 3.1.62 of this report.

3.6.49 The observations and assessments of the Stage 3 Evaluation Committee were recorded in two separate reports, one for each bidder, signed 3 October 2013. The NAO noted that the Stage 3 evaluation reports predated the Stage 2 evaluation reports, dated 9 October 2013. Notwithstanding this, the anomaly in chronology was not deemed to be of concern to the NAO. The Stage 3 evaluation reports included an overview of the Consortia’s structure and the proposed implementation approach, the method of evaluation, details of the clarifications sought, as well as the result of evaluation and the underlying justifications thereto. Of note was a comment by the Stage 3 Evaluation Committee indicating that any changes in the consortium, contractors or sub-contractors of each bid would invalidate the assessment and necessitate a new evaluation. The Committee noted that this stage of the evaluation was mainly based on the assessment and verification of Bid Form 5, which related to additional bidder qualifications, complemented with the evaluation of other bid documents. According to the final evaluation report, the Stage 3 evaluation also entailed reference to publicly available information, including but not limited to, statements made by the consortia members as well as their respective contractors and sub-contractors on their corporate websites.

3.6.50 The ElectroGas Consortium was allocated a total of 61 marks, out of a maximum score of 100, at Stage 3 of the RfP evaluation (Figure 18 refers). Details of the marks awarded by the Stage 3 Evaluation Committee for each criterion and sub-criterion, as well as the underlying justifications for each score allocation, are outlined in the ensuing paragraphs.

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Figure 18: RfP Stage 3 Evaluation Results – ElectroGas Consortium

Criterion	Score Allocated	Maximum Score
1. Company's Electricity Facility Additional Experience	19	25
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	4	10
Additional experience of the EPC contractor(s) committed to the construction of the SPC's electricity facilities	5	5
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC's electricity facilities	5	5
Relevant experience of the management team and key personnel of the commercial management of a CCGT power plant, with the employees named and their roles in the SPC clearly identified	5	5
2. Company's Gas Facility Additional Experience	15	25
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	4	10
Additional experience of the EPC contractor(s) committed to the construction of the SPC's gas facilities	1	5
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC's gas facilities	5	5
Relevant experience of the management team and key personnel of the commercial management of a power station, with the employees named and their roles in the SPC clearly identified	5	5
3. Energy and Gas Delivery	22	30
LNG supplier as a member of the consortium, with an equity holding of at least 20 per cent, with proven access to sufficient LNG quantities for the entire duration of the Energy Agreements	10	10
Existing committed commercial arrangement with one or more LNG suppliers to supply sufficient LNG quantities for the entire duration of the Energy Agreements	5	5
Consortium member, with an equity holding of at least 20 per cent, who can demonstrate a proven delivery plan for gas and energy, including project management and implementation structure	2	10
Committed commercial arrangement with one or more LNG suppliers with a proven delivery plan for the PPA and GSA. Supplier/s must have successfully implemented a similar delivery plan for the delivery of a minimum of 0.5 MTPA of LNG from liquefaction source to the delivery of gas or energy to a final consumer	5	5
4. Bidder's Financial Strength	5	20
Credit rating of the lead member	0	15
Additional experience of the financial adviser	5	5
Total Score	61	100

3.6.51 With respect to the first criterion, that is, the bidder's additional experience in electricity facilities, the Stage 3 Evaluation Committee awarded the ElectroGas Consortium a total of 19 marks out of a maximum score of 25. The Consortium attained maximum marks for three of the sub-criteria, namely those related to the additional experience of the EPC contractor, the additional experience of the O&M contractor, and the relevant experience of the management team and key personnel in the commercial management of a power station. Valid references

for all of these sub-criteria were provided. Specifically, the Consortium provided five valid EPC project references and five valid O&M project references, all related to projects undertaken by Siemens Industrial Turbomachinery, the proposed EPC and O&M contractor. Additionally, the Consortium named five management team and key personnel involved in the commercial management of a CCGT power plant with more than 10 years of international experience in relevant projects. With respect to the evidence presented corresponding to the additional lead developer experience of a consortium member with at least 20 per cent equity share, following an initial assessment of the information submitted by the Consortium, the Committee raised one clarification request. In this context, the Consortium was requested to submit supporting information to demonstrate that a Consortium member had a leading role in the five projects identified by the Consortium as evidence of additional lead developer experience. In response, the Consortium provided details outlining the role of Siemens Project Ventures in each of the five projects. In three of these cases, the Committee was of the opinion that the ElectroGas Consortium failed to supply sufficient evidence substantiating that the Consortium member was in effect the lead developer for these projects, and consequently the Committee did not award any marks for these three projects. On the other hand, the Consortium was awarded two marks for each of the relevant projects that fulfilled the terms of the additional requirements.

3.6.52 The ElectroGas Consortium was awarded a total of 15 marks, out of a maximum score of 25, for additional experience in gas facilities. With respect to the additional lead developer experience by a Consortium member holding at least 20 per cent equity, the Consortium proposed three projects for consideration by the Stage 3 Evaluation Committee. The Committee eliminated one of the projects proposed as this comprised a refinery, whereas the requirement stipulated either a gas liquefaction terminal, an LNG floating storage unit, an LNG floating and regasification unit or an LNG tanker, that is, projects considered relevant to this appraisal. Consequently, the Committee awarded four marks on this sub-criterion, two marks for each relevant project. For the additional experience of the EPC Contractor sub-criterion, the Consortium was awarded one point, as four of the five projects proposed were not deemed relevant by the Committee. The Committee maintained that these four projects had been managed by other EPC Contractors, rather than URS Corporation. Full marks were allocated to the Consortium for the additional experience of the O&M Contractor and the relevant experience of the management team and key personnel. The Consortium presented details of five valid projects demonstrating the additional experience of SPT Marine Systems Ltd and five team members with more than 10 years of relevant experience, respectively.

3.6.53 In terms of the energy and gas delivery capability criterion, the ElectroGas Consortium obtained a total score of 22 marks, out of a maximum score of 30. Full marks were allocated for three of the sub-criteria. The Stage 3 Evaluation Committee awarded ten marks for the inclusion of an LNG supplier, with proven access to sufficient LNG quantities, as a member of the Consortium. In this respect, the Committee noted that Socar Trading SA fulfilled this sub-criterion. The Consortium was awarded five marks for a committed commercial arrangement with one or more LNG suppliers for the supply of sufficient LNG quantities. In its submission, the Consortium noted that Socar Trading SA had a portfolio of LNG sources, provided a list of six potential

suppliers and affirmed that Socar Trading SA was to enter into firm supply agreements with the potential suppliers closer to the financial close. In this respect, the Committee noted that no evidence of existing commercial arrangements was provided, yet, the existing relationships between Socar Trading SA and the suppliers were sufficient at this stage in the process to merit positive assessment. Similarly, the Consortium was awarded the maximum points for committed commercial arrangements with one or more LNG suppliers with proven delivery plans. The Committee noted that Socar Trading SA had an indicative agreement with an LNG supplier, who in turn made reference to five LNG delivery projects. With respect to evidence of a proven delivery plan for gas and energy by the Consortium member with an equity holding of at least 20 per cent, the Consortium indicated that it had acquired 66 per cent of a natural gas transmission operator and presented four examples of energy delivery plans. The Committee did not consider these examples as separate plans and allocated two marks for the fact that Socar Trading SA had entered into the LNG trading market by acquiring the operator.

3.6.54 For the final criterion, which sought to assess the bidder's financial strength, the ElectroGas Consortium failed to secure any marks for the sub-criterion relating to the credit rating of the lead member, while obtaining full marks for additional experience of the financial adviser. The Consortium indicated that Siemens AG and Siemens Financial Services GmbH had a credit rating of A+ from Standard and Poor's and provided evidence to this effect. The Committee noted that this member only held a 20 per cent equity share in the Consortium, and marks were to be allocated for the lead member, in this case Gasol plc. In this respect, the ElectroGas Consortium was not awarded any marks for this sub-criterion. On the other hand, the Committee accepted the projects identified by the Consortium as evidence of the experience of its financial adviser, in this case PwC, noting that although the indicated projects were not related to LNG, these were nonetheless considered relevant.

3.6.55 The Endeavor Consortium was allocated a total score of 37, out of a maximum score of 100, by the Stage 3 Evaluation Committee (Figure 19 refers). The Consortium secured 15 marks for the bidder's additional experience in electrical facilities, 15 marks for the bidder's additional experience in gas facilities, and 7 marks for the criterion related to the energy and gas delivery. On the other hand, the Consortium failed to obtain any marks for the criterion assessing the bidder's financial strength. The justification for these scores, as well as the breakdown of each criterion into the respective sub-criterion scores is presented hereunder.

Figure 19: RfP Stage 3 Evaluation Results – Endeavor Consortium

Criterion	Score Allocated	Maximum Score
1. Company’s Electricity Facility Additional Experience	15	25
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	0	10
Additional experience of the EPC contractor(s) committed to the construction of the SPC’s electricity facilities	5	5
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC’s electricity facilities	5	5
Relevant experience of the management team and key personnel of the commercial management of a CCGT power plant, with the employees named and their roles in the SPC clearly identified	5	5
2. Company’s Gas Facility Additional Experience	15	25
Additional lead developer experience gained by a consortium member with at least 20 per cent equity share	0	10
Additional experience of the EPC contractor(s) committed to the construction of the SPC’s gas facilities	5	5
Additional experience of the O&M contractor(s) committed to the operation and maintenance of the SPC’s gas facilities	5	5
Relevant experience of the management team and key personnel of the commercial management of a power station, with the employees named and their roles in the SPC clearly identified	5	5
3. Energy and Gas Delivery	7	30
LNG supplier as a member of the consortium, with an equity holding of at least 20 per cent, with proven access to sufficient LNG quantities for the entire duration of the Energy Agreements	0	10
Existing committed commercial arrangement with one or more LNG suppliers to supply sufficient LNG quantities for the entire duration of the Energy Agreements	5	5
Consortium member, with an equity holding of at least 20 per cent, who can demonstrate a proven delivery plan for gas and energy, including project management and implementation structure	0	10
Committed commercial arrangement with one or more LNG suppliers with a proven delivery plan for the PPA and GSA. Supplier/s must have successfully implemented a similar delivery plan for the delivery of a minimum of 0.5 MTPA of LNG from liquefaction source to the delivery of gas or energy to a final consumer	2	5
4. Bidder’s Financial Strength	0	20
Credit rating of the lead member	0	15
Additional experience of the financial adviser	0	5
Total Score	37	100

- 3.6.56 With respect to the additional electricity facility experience criterion, the Endeavor Consortium obtained full marks for three of the sub-criteria - those related to the experience of the electricity facilities EPC contractor, the O&M contractor and the management team and key personnel, with references provided deemed valid by the Stage 3 Evaluation Committee. The Committee accepted as valid the four projects where the proposed EPC contractor, Metka SA, was responsible for the EPC work, and the fifth project, where the EPC work was undertaken by a consortium of which Metka SA was a member. In this case, Metka SA had provided balance of plant and engineering and construction services. The Consortium provided five valid O&M projects as references of work carried out by Consolidated Asset Management Services (CAMS), the proposed O&M contractor for the electricity facilities. The five indicated team members, all CAMS employees, fulfilled the requirement of a minimum of ten years' relevant experience. However, the Consortium was not awarded any marks for the criterion relating to the additional lead developer experience of a Consortium member with at least 20 per cent equity share. The Committee noted that two of the projects indicated had been listed as evidence in fulfilment of the minimum requirements, and therefore were not considered as evidence of additional experience in this regard. The other three projects indicated were in actual fact developed by another company. While the Committee acknowledged that the Endeavor employees were employed with this other company at the time, it concluded that these references did not fulfil the criteria to justify the award of additional points at this stage.
- 3.6.57 Similarly, in terms of the gas facilities, the Endeavor Consortium was awarded full marks – five for each sub-criterion – for the additional experience of the EPC contractor, O&M contractor and management team and key personnel, that is, five marks for each of these sub-criteria. The Stage 3 Evaluation Committee did not award any marks for the additional lead developer experience by a Consortium member holding at least 20 per cent equity. The Consortium submitted information on three projects for consideration as relevant in terms of lead developer gas facilities experience; however, none were deemed valid by the Committee. Whereas two of these projects were considered in fulfilment of the minimum requirements, and therefore could not be considered as evidence of additional experience, the third project had not yet been completed, a key requirement stated in the RfP. On the other hand, the references provided as evidence of additional EPC Contractor experience and O&M Contractor experience were considered valid. With regard to the additional experience of team members, the Consortium provided details of only two management team members, yet made reference to Bid Form 11.26, which included details of the wider project management team. In view of the conflicting information provided, on 28 September 2013, the Committee requested the Consortium to provide full details of the team members in the relevant bid form – Bid Form 5. In response to this request, on 2 October 2013, the Consortium resubmitted the relevant bid form, this time specifying five team members, and therefore securing five marks for this sub-criterion.
- 3.6.58 In assessing the energy and gas delivery capability criterion, the Stage 3 Evaluation Committee awarded the Endeavor Consortium marks on two of the four sub-criteria. The Consortium obtained full marks for a committed commercial arrangement with one or more LNG suppliers

for the supply of sufficient LNG quantities and two marks out of a possible five for evidence of a proven delivery plan for gas and energy by a Consortium member with an equity holding of at least 20 per cent. In this respect, the Consortium presented documentation indicating commitment for the delivery of LNG by an LNG supplier, as well as two gas delivery plans. The Consortium did not provide any evidence of the inclusion as an LNG supplier as its member or evidence of a proven delivery plan for gas and energy, and in this respect was not awarded any marks on these sub-criteria.

- 3.6.59 The Endeavor Consortium was not awarded any marks with respect to the financial strength criterion. The lead member was not in possession of a credit rating, and therefore the Stage 3 Evaluation Committee did not award any marks for the corresponding sub-criterion. With respect to the additional experience of the financial adviser sub-criterion, the Committee noted that the Consortium had identified a project that had been cited as part of the submission in terms of the minimum requirements, and therefore the Committee was of the understanding that this was not eligible in terms of additional experience.

Stage 4 – Bid Price and Terms Comparison

- 3.6.60 In Stage 4 of the RfP evaluation, a comparison of the bid price and terms submitted by the ElectroGas Consortium and the Endeavor Consortium was undertaken. The Stage 4 Evaluation Committee was composed of a Team Leader and two members. The Managing Partner Nexia BT was assigned the role of Team Leader, while the other members were two Finance Executives, also employed by Nexia BT. Letters of appointment were issued to the Stage 4 Evaluation Committee on 19 September 2013, and declarations of impartiality were signed on 23 September 2013 and 25 September 2013.

- 3.6.61 The objective of the Stage 4 Evaluation Committee was to compute and calculate the lifetime aggregate cost of electricity and gas being offered by each bidder to Enemalta. Specifically, the Stage 4 Evaluation Committee was tasked with:

- a. gaining appropriate insight and understanding on the overall mechanics and functions of the financial model prepared as part of the bid process;
- b. gaining insight on the various elements to be inputted in the financial model from the various bid forms forming part of the RfP submissions;
- c. reviewing and collecting all bid forms associated with the required inputs into the financial model;
- d. processing all inputs contained in the bid forms into the financial model;
- e. carrying out appropriate verification checks to ensure the accuracy of the results;

- f. signing off the resulting lifetime costs of electricity offered by each bidder; and
- g. preparing a brief report outlining the methodology and principles used when generating the results.

3.6.62 Assistance with regard to technical engineering matters was sought from the technical members on the other evaluation committees and from a DNV KEMA Consultant. This was in line with the terms of reference signed between Enemalta and DNV KEMA for proposed services related to the evaluation of proposals, which indicated that DNV KEMA was to make available personnel to provide technical advice to the evaluation committees on an ad hoc manner. Furthermore, DNV KEMA was to assist the Stage 4 Evaluation Committee through financial evaluation support during the compilation of the final scoring of bidders. The financial evaluation was to be carried out on the basis of a financial model prepared by DNV KEMA, in line with the criteria outlined in the RfP.

3.6.63 As indicated in the RfP, this stage of the evaluation process was in effect a price evaluation, which modelled the energy and gas price structures set out in the draft PPA and GSA, and assumed that no financial penalties would be incurred during operation. The evaluation commenced on 23 September 2013 and was concluded on 10 October 2013. The observations and assessments of the Stage 4 Evaluation Committee were recorded in two separate reports, one for each bidder. The Stage 4 evaluation reports included an overview of the method of evaluation, details of the clarifications sought, as well as the result of the final price evaluation and marks assigned. The Committee noted that this stage of the evaluation was mainly based on the assessment and verification of Bid Forms 7, 8, 8a and 21, which related to the PPA bid parameters, the GSA bid parameters, the EIB debt proportions and the sale option fair value, respectively.

3.6.64 The bid quantities submitted in Bid Forms 7, 8, 8A and 21, which represented the bidders' commercial offer, constituted the inputs to the financial model. The inputs relating to the electricity facility, submitted in Bid Form 7 as the PPA bid parameters, included the:

- a. tendered energy availability, MW;
- b. tendered heat rate, GJ/MWh;
- c. base capacity charge for power, €/MWh;
- d. base capacity charge for gas, €/MWh;
- e. variable operating cost for power, €/MWh;
- f. variable operating cost for gas, €/MWh;
- g. annual capacity degradation factor, %/year;

- h. annual efficiency degradation factor, %/year;
- i. base start charge, mmBTU;
- j. relative part load (150 MW) heat rate, GJ/MWh;
- k. base reactive energy charge, mmBTU/MVARh; and
- l. contract outage duration, hours.

3.6.65 The gas facility inputs, submitted as GSA bid parameters in Bid Form 8, included the:

- a. commodity multiplier, bbl/mmBTU;
- b. fixed gas price, €/mmBTU;
- c. base delivery charge, €/mmBTU;
- d. base variable operating cost, €/mmBTU;
- e. base gas availability charge, €/mmBTU; and
- f. tendered gas availability, mmBTU/hr.

3.6.66 Another bid parameter related to the proportion of debt funding provided by the EIB at Financial Closing and the proportion of debt funding to be provided by the EIB that the bidder included in the bids, which information was submitted in Bid Form 8A. Finally, the Sale Option Fair Value was specified in Bid Form 21. The Stage 4 Evaluation Committee reviewed the submitted bid forms and assessed whether these were complete, clear and in compliance with the requirements set out by Enemalta. Where deviations from the set requirements were noted, clarifications were sought.

3.6.67 The financial model also included other parameters and components, most of which were specified in the RfP or in clarifications, namely:

- a. the base year, and construction start year of both facilities, 2013;
- b. construction duration term of both facilities, two years;
- c. operating life of both facilities, 30 years;
- d. PPA and GSA term, 18 years;

- e. duration of fixed base capacity charge period, for both the GSA and the PPA, five years;
- f. the Enemalta long-term nominal discount rate, five per cent;
- g. the yearly inflation, two per cent;
- h. number of dispatched successful starts for the electricity facility, three;
- i. total hours in a year during which the electricity facility would be operating on part load (150MW), 750 hours;
- j. yearly generation of reactive power outside the Minimum Function Specification limits for the electricity facility, 500 MVARh;
- k. forced outage rate for the electricity facility, three per cent;
- l. the Brent Price for 2013, equal to the ICE Brent closing price of the November 2013 futures contract trading quoted on 20 September 2013, €80.82/bbl; and
- m. the Brent Index.

3.6.68 As outlined in the RfP, the values set for inflation, fuel price indexation and the Enemalta nominal discount rate were to represent scenarios that cover possible outcomes, essential in performing a robust evaluation of bids, rather than accurate projections. Furthermore, the NAO was informed by Enemalta that the 30-year operating life of both facilities was based on the expected useful life of combined cycle plants, determined according to industry practice as advised by Enemalta's technical advisors. The NAO noted that while bidders were informed that the parameter relating to operating life formed part of the financial model, the 30-year term was not specified in the RfP.

3.6.69 The data from Bid Forms 7, 8, 8A and 21, as well as the other parameter/component values, were used to populate the formulae to calculate the Final Price. As outlined in the RfP, the Final Price calculation included four components:

- a. the LAP_e supplied from the SPC's electricity facility per MWh_e of electricity sold in accordance with the terms of the PPA;
- b. the LAP_g supplied from the SPC's gas facility per mmbTU of gas sold in accordance with the terms of the GSA;
- c. the RUL_{CCGT} beyond the duration of the PPA, expressed in millions of euro; and
- d. the RUL_{LNG} beyond the duration of the PPA and the GSA, expressed in millions of euro.

In effect, the Sale Option Fair Value is an aggregation of the RUL_{CCGT} and RUL_{LNG} .

3.6.70 The four components outlined in the preceding paragraph were converted into a single value for each bidder, the Final Price, expressed in €/MWh. The Final Price was a measure of the per unit price for the electricity and gas facilities for the lifetime duration of the facilities, at net present value. The total cost included the cost to be incurred throughout the 18-year term for the PPA and the GSA, in terms of energy and availability payments, as well as the Sale Option Fair Value. The energy payment for the electricity facilities included the cost of the fuel utilised for the electricity facilities (Delimara 4), variable operating costs for power and gas, as well as costs associated with ancillary services, including starts, part load operation and reactive power. The availability payment for the electricity facilities comprised two capital cost recovery components, one for power and one for gas. The energy payment for the gas facilities entailed the cost of fuel required for Delimara 3 and variable costs, which included the base variable operating cost for gas and the base delivery charge for gas. The availability payment for the gas facilities was in effect a capital cost recovery for gas. The Sale Option Fair Value was the value quoted by the bidders as the price to be paid by Enemalta to the SPC if at the end of the 18-year term, on expiry of the Energy Agreements, the SPC opted to transfer the energy facilities to Enemalta.

3.6.71 The total cost was divided by a measure of the total electricity for the operating life of the plants, to produce a per unit price. The total electricity was computed by adding the electricity to be produced in Delimara 3 and Delimara 4 throughout the 18-year term of the PPA and the GSA with the notional electricity to be purchased as part of the sale option at the end of the contract term. This notional amount was calculated by multiplying the projected total electricity generation for Delimara 3 and Delimara 4 for the term following the expiration of the PPA and GSA until the end of the operational life of the plants, by the proportion of total costs relating to fixed costs (availability payments), calculated at net present value.

3.6.72 Following the review and validation of the relevant bid forms, the Stage 4 Evaluation Committee noted various matters relating to the submission by the ElectroGas Consortium and sought clarifications to address them.

- a. Bid Form 7, Item 2a: The ElectroGas Consortium cited two separate base capacity charges for power, one corresponding to the first five years of the PPA term, and the other corresponding to the remaining period. This deviated from that requested at the RfP stage, as specified in Bid Form 7. The mechanics of the financial model were then revised to take into consideration the differentiated pricing, while remaining consistent with the formulae and methodology outlined in the PPA and the GSA.
- b. Bid Form 7, Item 2c: The information regarding the annual capacity degradation factor and the annual efficiency degradation factor was submitted in the form of a chart, rendering it not possible for the Stage 4 Evaluation Committee to clearly deduce the percentage value for each year. The Committee requested a clarification in this regard, specifically the submission of these two factors in terms of percentage per year. In response, on 2 October 2013, the ElectroGas Consortium submitted the equivalent average annual linear degradation rates represented in the chart.

- c. Bid Form 7, Item 2d: In its original submission, the ElectroGas Consortium cited three values for the base start charge, that is, 2.45 mmBTU for a cold start, 1.83 mmBTU for a warm start and 0.73 mmBTU for a hot start. The ElectroGas Consortium was subsequently requested to provide a single composite value for the base start charge. On 2 October 2013, the Consortium submitted its clarification and cited a value of 1,212 mmBTU per start.
- d. Bid Form 7, Item 2d: Having reviewed the values submitted by the ElectroGas Consortium for the relative part load heat rates, the Stage 4 Evaluation Committee considered these to be erroneous. Following a request for clarification, on 2 October 2013, the Consortium confirmed that the information provided had in fact not been expressed in the requested unit, and in turn reproduced the values in the correct unit.
- e. Bid Form 7, Item 4a: The ElectroGas Consortium submitted three contract outage durations, corresponding to the outages for combustor inspection, hot gas path inspection and major inspection, consistent with the relative bid form. At clarification stage, the Consortium was requested to specify the total contract estimated outage duration per year, to facilitate the calculation of the formulae. In the re-submitted Bid Form 7, dated 2 October 2013, the Consortium provided a table indicating the estimated contract outage duration per year, in hours. In view of the fact that the total yearly estimated contract outage duration submitted by the Consortium varied from one year to the next, the Stage 4 Evaluation Committee utilised the aggregate yearly average, for the purpose of calculating the Final Price. This decision was taken following referral to the technical consultants.

In its review of the calculations undertaken by the Stage 4 Evaluation Committee, the NAO noted an incongruence between the contract outage duration cited by the ElectroGas Consortium and that computed by the Committee. Following queries raised by this Office, Enemalta confirmed an error in the computation of contract outage hours by the Committee; however, indicated that the impact on the final price was immaterial. The NAO confirmed this understanding.

- f. Bid Form 8, Item 2c: The Stage 4 Evaluation Committee considered the values for the tendered gas availability, as submitted by the ElectroGas Consortium in the relevant bid form, as possibly outside of the normal range. For this reason, the Committee requested the Consortium to re-submit this value, taking into consideration only the gas to be made available to Enemalta with respect to the GSA. In response, on 7 October 2013, the Consortium acknowledged that the values submitted included the total gas to be made available under the PPA and the GSA. Citing the PPA and GSA proportions of gas as indicated in the RfP, that is 71 per cent for the PPA and 29 per cent for the GSA, the Consortium indicated the apportionment in absolute values for the PPA and the GSA of the figure originally submitted with the bid.

Following this clarification, the Stage 4 Evaluation Committee noted that the ElectroGas Consortium had provided incorrect workings that reflected an erroneous understanding of the tendered gas availability and how it was to be derived. Consequently, a second request for clarification was issued, providing a detailed definition of the tendered gas availability and requesting the submission of this parameter value, which was to exclude the gas to be made available at the electricity facilities. Also noted was the fact that the gas to be made available at the electricity facilities was not included in the formulae defined in either the PPA or the GSA.

In its reply, dated 9 October 2013, the ElectroGas Consortium submitted two options. The first option was based on the original values submitted, now excluding the PPA portion of gas provision, resulting in a tendered gas availability of 868.55 mmBTU/hr. The second option cited a value based on the Minimum Functional Specifications requirements, that is, 1,158.27 mmBTU/hr. For the second option, the base gas availability charge was revised from €1.242 to €0.9313, to retain the same gas availability payment amount. The Stage 4 Evaluation Committee opted to base its evaluation on the second option, as this reflected the correct interpretation of the GSA.

3.6.73 Prior to the computation of the Final Price, other considerations were taken into account, relating to the EIB debt parameters and the Sale Option Fair Value. With respect to the EIB debt parameters, the ElectroGas Consortium indicated, in Bid Form 8a, that it was prepared to incorporate EIB financing, assuming that the terms were appropriate. While the Consortium indicated that it had discussed this possibility in general terms with its four financing banks, no discussions were held with the EIB, noting that such discussions were being pursued by Enemalta. In this respect, for the purposes of populating the formulae for the calculation of the Final Price, the Stage 4 Evaluation Committee considered the proportion of debt funding from the EIB to be equal to zero. In Bid Form 21, the Consortium indicated that the facilities would be transferred to Enemalta for €60,000,000 at the end of the 18-year contract, net of the accumulated decommissioning provision until that date. Based on this submission, the Stage 4 Evaluation Committee established the Sale Option Fair Value to be equal to €60,000,000.

3.6.74 The bid submissions by the ElectroGas Consortium, as well as the other parameter/component values inputted in the formulae produced a Final Price of €95.99/MWh, which was based on the following:

- a. €119.01 as LAP_e ;
- b. €12.88 as LAP_g ; and
- c. €60,000,000 as RUL_{CCGT} and RUL_{LNG} .

3.6.75 The €95.99/MWh rate was also cited in the bid report relating to the submission by the ElectroGas Consortium; however, was defined as the long run blended price. This price was derived following the consideration of, among others:

- a. a fixed price of gas set at €9.63/mmBTU for the first five years;
- b. a Brent commodity multiplier of 14 per cent;
- c. a tendered energy availability of 205MW;
- d. a heat rate of 7.6Gj/MWh;
- e. a tendered gas availability of 858.55 mmBTU/hour; and
- f. a sale option value of €60,000,000.

3.6.76 According to the bid report, the average price of electricity to be sold by the ElectroGas Consortium for the first five years of the PPA was approximately €103/MWh. The average price of gas to be sold by the Consortium as per the GSA, including storage and regasification expenditure, for the first five years of the contract term was approximately €11.27/mmBTU.

3.6.77 Having reviewed the bid by the ElectroGas Consortium, the following relates to the consideration by the Stage 4 Evaluation Committee of the submission by the Endeavor Consortium. The Committee reviewed and validated the relevant bid forms and, where necessary, sought clarifications.

- a. Bid Form 7, Item 1a: The Endeavor Consortium submitted two separate rates for the tendered energy availability, one corresponding to a scenario with inlet air cooling, referred to as maximum power, and the other corresponding to a scenario without inlet air cooling, referred to as the base case. Following a request by the Stage 4 Evaluation Committee for one viable option, the Consortium re-submitted Bid Form 7, on 1 October 2013, citing the base case value.
- b. Bid Form 7, Item 1c: Similarly, in its RfP submission, the Endeavor Consortium provided two values for the tendered heat rate, one for maximum power and one for the base case. Following the Stage 4 Evaluation Committee's request to provide only one viable option, the Consortium re-submitted Bid Form 7, on 1 October 2013, citing the base case value.
- c. Bid Form 7, Item 2c: The Endeavor Consortium submitted the information regarding the annual capacity degradation factor and the annual efficiency degradation factor in the form of a chart, rather than percentages per year. In this respect, the Stage 4 Evaluation Committee requested the submission of these two factors in terms of a percentage per year. This information, specified for each year of the 18-year term, was submitted by the Consortium on 1 October 2013. The Committee computed an average of these values to derive a single input for the model.
- d. Bid Form 7, Item 2d: The Endeavor Consortium originally submitted a value of 2,117 mmBTU for the base start charge. The Stage 4 Evaluation Committee considered the value

submitted as incorrect, as this was deemed too high and not within a technically acceptable range. Consequently, the Consortium was requested to confirm the value of the base start charge. In the re-submitted Bid Form 7, dated 1 October 2013, the Consortium specified a base start charge of 1,900 mmBTU.

- e. Bid Form 7, Item 2d: In its original submission, the Endeavor Consortium provided the information relating to the base reactive energy charge as a curve. Following a request for clarification by the Stage 4 Evaluation Committee, on 1 October 2013, the Consortium provided three separate values in mmBTU/MVARh for three different lagging power factors. Following consultation with the technical team, the Committee included an average of these three values in the formulae.
- f. Bid Form 7, Item 4a: The Endeavor Consortium submitted three contract outage durations, corresponding to the outages for combustor inspection, hot gas path inspection and major inspection, as indicated in the bid form. At clarification stage, the Consortium was requested to specify the total contract estimated outage duration per year. In response, on 1 October 2013, the Consortium indicated this value as 350.4 hours per year.
- g. Bid Form 8, Item 1a: The Endeavor Consortium provided three pricing options with respect to the GSA. In clarifications, the Consortium was requested to provide a single option, and to express the commodity multiplier in terms of bbl/mmBTU.

In response to clarifications sought with respect to Bid Form 8, the Consortium maintained that it was its intention to submit multiple bids, and re-submitted three separate forms, citing compliance with the RfP. The bids comprised a Henry Hub based option, a fixed price and a Brent based option. The Stage 4 Evaluation Committee observed that the first and third option failed to specify a fixed price for the first five years of the contract term, a requirement specified in the RfP. Despite the fact that the Consortium indicated that it would assist Enemalta hedge for a fixed price, if requested, the Committee determined that the first and the third options could not be evaluated. Additionally, in the case of the first option, which was based on the Henry Hub pricing, this also deviated from the requirement specified in the RfP of indexing based on the Brent Price Index.

The second option specified a fixed price for the first five years of the contract term, followed by a floating price period based either on a Henry Hub commodity multiplier or a Brent commodity multiplier, subject to Enemalta's preference. Considering Enemalta's requirement for Brent indexation, a further clarification was submitted to the Consortium on 4 October 2013, wherein it was to confirm whether the option of a fixed price, coupled with a Brent Price index, was feasible. In its reply, dated 7 October 2013, the Consortium indicated that Enemalta could opt for a fixed price of €10.50/mmBTU for the first five years, followed by Brent-based pricing ranging from 12.5%*Brent+US\$0.50 per mmBTU to 13.5%*Brent+US\$0.80 per mmBTU. Alternatively, the Consortium suggested that Enemalta could select the floating price based on the Brent index for the entire 18-year period,

and in that case, the price would be $12.5\% \times \text{Brent} + \text{US\$}0.50$ per mmBTU. Additionally, the Consortium noted that the fixed price of €10.50/mmBTU was based on LNG market pricing at the time and was subject to change between then and the signing of the final Transaction Agreements. Moreover, the Consortium indicated that all pricing was subject to final negotiation and execution of definitive agreements with LNG suppliers.

Following this submission, the Committee based its evaluation on the rate of €10.50/mmBTU for the fixed price period and a commodity multiplier of $12.5\% \times \text{Brent} + \text{US\$}0.50$ per mmBTU. In the Stage 4 evaluation report reference was made to model adjustments effected to account for the complex multiplier; however, according to the Committee, these changes bore no resulting effect on the underlying formulae constituting the GSA and the PPA. The NAO enquired with regard to the model adjustments effected. Enemalta explained that the formula in the model did not contemplate an intercept (US\$0.50) and therefore, the computation of the Endeavor Consortium had to be adjusted to accommodate this variable. This reply was deemed satisfactory by the NAO.

Subsequent to the clarification dated 7 October 2013, the Consortium notified Enemalta that, following further discussions with Morgan Stanley, it was able to contract LNG at €10.45/mmBTU for the first five years. Following legal advice sought, the Committee concluded that the reduced price for the fixed price period was not to be taken into consideration as this adjustment in bid was received after the submission date. The NAO noted that had this adjustment been taken into account, the net effect on Final Price would have been marginal, decreasing by €0.11/MWh.

3.6.78 Other considerations, prior to the computation of the Final Price, related to the EIB debt parameters. The Endeavor Consortium indicated that it had not factored in potential EIB financing into its bid, and that if selected as the Preferred Bidder, and if financing was made available on more attractive terms, then the Consortium intended to pass the savings on to Enemalta in the form of a reduction in tariffs. In this respect, for the purposes of populating the formulae for the calculation of the Final Price, the Stage 4 Evaluation Committee considered the proportion of debt funding from the EIB to be equal to zero.

3.6.79 The bid submissions by the Endeavor Consortium, as well as the other parameter/component values inputted in the formulae produced a Final Price of €115.27/MWh, which rate was based on the following values:

- a. €131.87 as LAP_e ;
- b. €20.66 as LAP_g ; and
- c. €261,000,000 as RUL_{CCGT} and RUL_{LNG} .

3.6.80 The €115.27/MWh rate was also cited in the bid report relating to the submission by the Endeavor Consortium; however, was defined as the long run blended price. This price was derived following the consideration of, among others:

- a. a fixed price of gas set at €10.50/mmBTU for the first five years;
- b. a Brent commodity multiplier of 12.5 per cent plus an additional US\$0.50/mmBTU;
- c. a tendered energy availability of 220MW;
- d. a heat rate of 7.52Gj/MWh;
- e. a tendered gas availability of 1,089 mmBTU/hour; and
- f. a sale option value of €261,000,000.

3.6.81 According to the bid report, the average price of electricity to be sold by the Endeavor Consortium for the first five years of the PPA was approximately €132/MWh. The average price of gas to be sold by the Consortium as per the GSA, including storage and regasification expenditure, for the first five years of the contract term was approximately €21.02/mmBTU.

3.6.82 The Final Price established by the Stage 4 Evaluation Committee with respect to the submissions by the ElectroGas Consortium and the Endeavor Consortium were ranked in ascending order and points were assigned on the basis of the methodology outlined in the RfP. The bidder with the cheapest Final Price was to be allocated 100 marks, while the other bid was to be assigned marks corresponding to the percentage difference between the two Final Prices. At €95.99/MWh, the cheapest Final Price was that submitted by the ElectroGas Consortium and therefore awarded 100 marks. The Endeavor Consortium, with a Final Price of €115.27/MWh, was awarded 79.91 marks (Figure 20 refers).

Figure 20: RfP Stage 4 evaluation results

Bidder	Final Price (€/MWh)	Marks
ElectroGas Consortium	€95.99	100.00
Endeavor Consortium	€115.27	79.91

Stage 5 – Final Evaluation

3.6.83 Stage 5 of the RfP evaluation entailed the consolidation of the advice, recommendations and issues put forward by the various evaluation committees at each stage of the process. The Stage 5 Evaluation Committee comprised a Chair, who also held the position of Project Team Director and Programme Manager, and the Team Leaders of the four evaluation stages as members.

- 3.6.84 In effect, the Stage 5 evaluation of the RfP comprised the aggregation of the analysis carried out by the Stage 3 and Stage 4 Evaluation Committees, intended to identify the Preferred Bidder and the Reserve Bidder. These were to be determined according to the marking system outlined in the RfP and described in the previous sections of this report. The marks attained in Stage 3 of the evaluation process were to be weighted with a factor of 0.2, while marks obtained in Stage 4 of the process were to be allocated a weighting of 0.8, to produce the Final Score. The bidder with the highest Final Score was to be selected as the Preferred Bidder, while the bidder with the next highest Final Score was to be selected as the Reserve Bidder. The Preferred Bidder and Reserve Bidder were then to be proposed to the Programme Review Board and subsequently the Board of Directors of Enemalta for their consideration.
- 3.6.85 The Stage 5 evaluation report was finalised on 10 October 2013. The report contained an overview of the proposed bidders, including a review of the membership of each consortium and their proposed solution, the evaluation committees’ terms of reference and the outcome of the Stage 1 to Stage 4 evaluations. In addition, a review of the methodology employed in the final stage of the evaluation was outlined, while the report concluded with a recommendation of the Preferred Bidder and Reserve Bidder.
- 3.6.86 Based on the methodology outlined above, the ElectroGas Consortium obtained a Final Score of 92.2, while the Endeavor Consortium was allocated a Final Score of 71.3 (Figure 21 refers).

Figure 21: RfP Stage 5 evaluation results

	ElectroGas Consortium	Endeavor Consortium
Stage 3 marks	61	37
Weighted Stage 3 marks	12.2	7.4
Stage 4 Final Price	€95.99	€115.27
Stage 4 marks	100	79.9
Weighted Stage 4 marks	80	63.9
Final Score	92.2	71.3

- 3.6.87 The Stage 5 Evaluation Committee recommended that, subject to the ratification of the key issues outlined in Stage 2 of the evaluation process, which related to the minimum requirements, the proposed Preferred Bidder was the ElectroGas Consortium, while the proposed Reserve Bidder was the Endeavor Consortium.

3.7 Analysis of the RfP Evaluation Process

- 3.7.1 The NAO is of the opinion that the organisation of the RfP evaluation process was generally well managed and structured. The allocation of the different stages of the evaluation process to distinct committees was appropriately designed, allowing for the matching of specific areas of expertise to the corresponding aspect under adjudication. With the exception of one member, who formed part of the Stage 2 and Stage 3 Evaluation Committees, the other members of the committees were tasked with contributing towards one specific aspect of assessment.

Notwithstanding this, the NAO deems the involvement of this member on two evaluation committees as acceptable in that it represented the appropriate utilisation of the technical expertise of this member. The terms of reference set by Enemalta generally delineated the responsibilities of each of the evaluation committees, contributing to the overall expedience with which the process was undertaken.

3.7.2 By the RfP bid submission deadline, three bids were received by Enemalta, namely those by, the ElectroGas Consortium, the Endeavor Consortium and the Yildirim Consortium. It was in Enemalta's interest to ensure as wide a participation as possible in order to obtain the best possible value from the contracts that were to be awarded. Despite the initial shortlisting by Enemalta of the six bidders that provided a complete solution and the five bidders that proposed a partial solution at the EoIC stage, three bids were submitted at RfP stage, one of which was deemed ineligible. Whether the competitive tension that Enemalta sought to create through this process of procurement was achieved, or otherwise, is debatable given that selection was ultimately restricted to one of two bids.

3.7.3 Of significant concern to the NAO was the lack of appropriate due diligence undertaken at the RfP stage of evaluation. The NAO acknowledges that an element of due diligence, consisting of basic Internet-based searches, was carried out at the EoIC stage. However, it is pertinent to note that the EoIC Evaluation Committee deemed it imperative that a detailed due diligence process be undertaken at the RfP stage. Notwithstanding this, in the review of the RfP evaluation process, the NAO noted no indication that a due diligence review of the two qualified bidders had been undertaken.

3.7.4 Queries raised in this regard resulted in Enemalta asserting that a due diligence process had in fact been carried out on the ElectroGas Consortium and the Endeavor Consortium based on the methodology proposed by its advisors. Enemalta indicated that a summary of the findings featured in the evaluation reports. One aspect elaborated on by Enemalta was that, as part of the competitive process, bidders were requested to provide proof of their financial standing through a credit rating. In the event where no credit rating was available, bidders were requested to supply a letter from a reputable bank that provided claims on the financial robustness of each of the sponsors. In the absence of such a letter, the bidders were requested to submit financial statements.

3.7.5 According to Enemalta, all the financial statements of the members of the ElectroGas Consortium were reviewed. In all cases, a clean opinion on the financial statements of the sponsors was given. However, in the case of Gasol plc, an emphasis of matter was raised. Although a potential situation for a going concern issue in the future unless certain commercial contracts were concretised was highlighted, the RfP evaluation committee took a view that the submission made by the Consortium was still admissible. This was based on the premise that:

- a. the submission by Gasol plc had no influence on the commercial and technical criteria that were to be fulfilled for the purpose of completing the project. More specifically, these criteria were fulfilled by the other members of the Consortium;

- b. Gasol plc did not qualify as an insolvent company, and hence was not excluded from participation, since the financial position presented at evaluation recorded a positive net asset value;
- c. Socar Trading SA had provided a letter of commitment to cover the equity contribution of Gasol plc; and
- d. a letter from the banks had been submitted confirming willingness to support the project.

3.7.6 The NAO reviewed the financial statements of Gasol plc submitted by the ElectroGas Consortium in respect of the RfP. Excerpts of the financial statements for 2010, 2011 and 2012 are presented in Figure 22.

3.7.7 Evident in the submission by the ElectroGas Consortium were the financial difficulties encountered by Gasol plc, with documentation made available for evaluation at RfP stage indicating the risks identified by the auditors of Gasol plc. The Stage 2 Evaluation Committee was certainly aware of this situation as it acknowledged that Socar Trading SA had provided a letter of commitment to cover the equity contribution of Gasol plc. The NAO is of the opinion that, although not qualified, the financial statements should have raised significant concern for the Stage 2 Evaluation Committee with respect to the role of Gasol plc in the Consortium. Queries addressed to the Chair RfP Evaluation Committee as to whether this information was disregarded during evaluation were rebutted. According to the Chair RfP Evaluation Committee, Gasol plc was not legally or technically insolvent at that time and that the role of Gasol plc within the ElectroGas Consortium was not fundamental. Moreover, the Chair RfP Evaluation Committee noted that there was no area where Gasol plc bore any influence on the evaluation process. Notwithstanding that stated by the Chair RfP Evaluation Committee, the NAO maintains that the Stage 2 Evaluation Committee too readily dismissed concerns that the audit reports should have raised. Furthermore, justification that Socar Trading SA mitigated such risks through its commitment to cover the equity contribution of Gasol plc raise further doubt as to the utility of Gasol plc as the lead member of the ElectroGas Consortium.

3.7.8 From a technical point of view, Enemalta maintained that the ElectroGas Consortium had demonstrated the required level of expertise, a conclusion arrived at through assessment against the technical qualification criteria established by Enemalta's advisors. Enemalta indicated that the projects cited by the Consortium as evidence of experience were researched on the Internet for confirmation.

3.7.9 With regard to the Endeavor Consortium, a member submitted a bank letter of reference confirming its financial standing while another submitted its audited annual financial statements. The bank letter of reference was deemed sufficient and appropriate to prove the good financial standing of the member, while the audited financial statements provided a clean audit opinion with no issues expressed on a going concern basis. From a technical perspective, Enemalta noted that the Consortium provided appropriate technical experience supported by examples of projects undertaken, which were researched to confirm claims.

Figure 22: Excerpts from Gasol plc Annual Report and Accounts, 2010-2012

Year	Excerpt from Annual Report and Accounts
2010	Emphasis of matter – going concern and carrying value of company and consolidated goodwill In forming our opinion on the financial statements, which is not qualified, we have considered the adequacy of the disclosures made in note 1 to the financial statements concerning the Group’s and the Company’s ability to continue as a going concern. The Group and Company are dependent on successfully securing further financing. Although access to a £10million line of credit was obtained in June 2009, the ability to draw on the facility is dependent upon certain conditions outside of the control of the Group, including share price and share trading volumes. Although the directors are confident of being able to draw on the £10million facility and to obtain further sources of funding to enable the Group to progress projects to positive cash generation, this cannot be guaranteed and indicates the existence of a material uncertainty, which may cast significant doubt on the Group’s and the Company’s ability to continue as a going concern. The financial statements do not include the adjustments that would result if the Group and Company were unable to continue as a going concern.
2011	Emphasis of matter – going concern In forming our opinion on the financial statements, which is not qualified, we have considered the adequacy of the disclosures made in note 1 to the financial statements concerning the Group’s and the Company’s ability to continue as a going concern. The Group and Company are dependent on successfully securing further financing. Although access to a £10million line of credit obtained in June 2009 remains in place, the ability to draw on the facility is dependent on certain conditions outside the control of the Group, including share price and share trading volumes. Although the Directors are confident of being able to obtain further sources of funding to enable the Group to progress projects to positive cash generation, this cannot be guaranteed and indicates the existence of a material uncertainty, which may cast significant doubt on the Group’s and the Company’s ability to continue as a going concern. The financial statements do not include the adjustments that would result if the Group and Company were unable to continue as a going concern.
2012	Going concern The Directors have prepared these financial statements on a going concern basis. The Board is also confident that it retains the continuing support from its major shareholders to provide additional funding should other sources not be forthcoming. The Board acknowledges that the ability of Gasol and its subsidiary companies to continue as a going concern is inextricably linked to the success of its efforts to raise finance both to meet day-to-day operating needs and to fund Gasol’s participation in gas monetisation projects. This situation represents a material uncertainty regarding Gasol’s ability to continue as a going concern. Whilst these financial statements are prepared on a going concern basis, the Board also acknowledges that the valuation of certain assets on the Consolidated and Company Statement of Financial Position would differ under a break-up valuation. Notably, goodwill at both Company and Group level would be likely to carry a £nil value under a break-up valuation.

3.7.10 Notwithstanding that claimed by Enemalta, the NAO is of the opinion that the due diligence undertaken was insufficient and only partially addressed the risks associated with a project of this magnitude. In arriving at this conclusion, the NAO considered the evaluation undertaken at Stage 2 and Stage 3 of the RfP. Stage 2 of the RfP evaluation focused on the adherence of submissions to the established minimum requirements, both technical and financial, while

Stage 3 sought to determine the commercial, technical and financial strength of the bids, in excess of the minimum requirements. The Office was of the understanding that responsibility for due diligence notionally formed part of these stages of the RfP evaluation process, as it is at these stages that assertions made by the bidders were to be verified for correctness and completeness. Nevertheless, the terms of reference of the Stage 2 and Stage 3 Evaluation Committees failed to specifically include responsibility for due diligence and it is in this context that the NAO considers responsibility for this shortcoming as borne by the Programme Review Board and Enemalta.

- 3.7.11 The financial concerns flagged by the Stage 2 Evaluation Committee from a due diligence perspective related to the financial position of one of the shareholders of GEM Holdings Ltd, an identified shortfall of €20,000,000 in the long-term funding of the project, the inadequacy of the wording of the banks' commitment to fund the project and the decision by Socar Trading SA not to form a joint venture with Gasol plc. Another financial concern noted related to the fact that all the ElectroGas Consortium members, with the exception of Socar Trading SA, had failed to provide written confirmation that to the best of their knowledge, there were no facts or circumstances that could materially affect their cash flow from operations. In terms of financial due diligence, no particular insight could be drawn from the Stage 3 evaluation report, as its only focus was on whether the credit rating of the lead member exceeded the minimum requirement set out in the RfP. Despite that stated by Enemalta regarding the flagging of concerns relating to the financial strength of Gasol plc, a review of the evaluation process by the NAO confirmed that these concerns did not emerge during the adjudication of bids.
- 3.7.12 With regard to due diligence in terms of technical considerations, the NAO noted that the Stage 2 Evaluation Committee sought to verify certain projects cited by the ElectroGas Consortium as evidence of experience following concerns raised by the Committee. One aspect deemed non-conformant to RfP requirements related to occupational health and safety certification that the ElectroGas Consortium was to possess. In this case, the Committee acknowledged that the Consortium was to obtain valid certification by April 2014. In terms of technical due diligence relating to the Stage 3 evaluation process, the NAO noted that the Stage 3 Evaluation Committee comprehensively addressed the various facets of the submission. These comprised a review of the Consortium's electricity and gas facilities experience and matters relating to energy delivery.
- 3.7.13 Although reference was made to the submission by the ElectroGas Consortium, similar concerns emerge with respect to the Endeavor Consortium. The Stage 2 Evaluation Committee sought to verify project-related experience cited by the Consortium through an Internet search, the curricula vitae of certain members of the Consortium and certification relating to occupational health and safety. In each instance of the examples cited, the Committee deemed that no action was necessary.
- 3.7.14 In terms of the financial due diligence undertaken by the Stage 3 Evaluation Committee, no particular insight could be drawn from the evaluation report, as it mainly focused on whether the credit rating of the lead member exceeded the minimum requirement set out in the RfP.

With regard to the technical due diligence, the NAO noted that the Committee comprehensively addressed the various facets of the submission. These comprised a review of the Consortium’s electricity and gas facilities experience and matters relating to energy delivery.

3.7.15 Overall, the NAO is of the opinion that the due diligence undertaken was insufficient. While the review of technical-related matters was comprehensive, with verifications appropriately extended to encompass downstream partners, other aspects of the due diligence process were lacking. The financial aspect of the due diligence process was not sufficiently robust and thereby deemed inadequate by the Office given the materiality of the project. The NAO noted instances of reliance, at RfP stage, on the due diligence undertaken by the EoIC Evaluation Committee, when this was carried out in a very preliminary manner on the assumption that an in-depth verification would be carried out at RfP. Other aspects inadequately addressed in the due diligence undertaken related to governance and control checks, again reliant on the initial basic assessment undertaken at the EoIC stage of evaluation. Checks relating to fraud, bribery and corruption, internal controls, risk management considerations, ethical conduct and other governance issues were not part of the due diligence carried out. The NAO is of the opinion that consideration in terms of these aspects would have strengthened the scrutiny undertaken.

3.7.16 Having addressed the general concerns identified by the NAO with respect to the RfP, attention is now focused on the stage-specific conclusions arrived at by the Office. With regard to Stage 1 of the evaluation, the NAO is of the opinion that the exclusion of the Yildirim Consortium was justified and in line with that stipulated in the RfP. The exclusion of the bid submitted by the Yildirim Consortium on grounds of failure to submit a bid bond was congruent with the requirements of the RfP, which clearly stipulated that any bidder who failed to supply the bid bond would be eliminated from the bid process. The action by the Stage 1 Evaluation Committee not to seek to obtain missing documentation that was considered material in nature was in line with its terms of reference, that is, “to issue requests to bidders to submit non-material missing documentation within the specified timeframes outlined in the RfP.” The NAO considered the failure by the Yildirim Consortium to submit a bid bond and to indicate the price of gas per mmbTU as well as the commodity multiplier as a material shortcoming. The detailed shortcomings of the bid submitted by the Yildirim Consortium were not reviewed by the NAO as these were rendered moot in view of the Consortium’s elimination at Stage 1 of the evaluation process.

3.7.17 The bids submitted by the ElectroGas Consortium and the Endeavor Consortium had shortcomings in terms of completeness identified by the Stage 1 Evaluation Committee. Notwithstanding this, the Committee deemed both bids materially complete. Having reviewed the documentation submitted and the report drawn up by the Committee, the NAO is of the opinion that the conclusion arrived at by the Committee was reasonable. However, the Office’s attention was drawn to the fact that, although similar shortcomings were identified in submissions by the ElectroGas Consortium and the Endeavor Consortium, the Committee only sought advice from the technical and legal team with respect to the bid made by the ElectroGas Consortium. This difference in treatment was of concern to the NAO for it indicated that the

level of assurance sought with respect to the bid by the ElectroGas Consortium was not applied in the case of the bid by the Endeavor Consortium.

- 3.7.18 Stage 2 of the RfP evaluation process primarily entailed determining whether bids adhered to the minimum requirements outlined in the RfP. The Stage 2 Evaluation Committee noted multiple instances of shortcomings in terms of adherence to these requirements, which ranged in extent, from outright non-conformity to minor deviations. On occasion, shortcomings related to the submission of insufficient documentation or the statement of specifications that were to be determined at a later stage. The NAO deemed the reasoning applied by the Committee, in determining what was to be addressed by bidders through confirmation in terms of material compliance and what was to be resolved in the event of selection as the preferred bidder, as unclear.
- 3.7.19 The Stage 2 Evaluation Committee referred the most significant deviations identified to the Programme Review Board. These included reservations with respect to the Transaction Agreements noted by both bidders, their failure to take into account the installation of specific abatement equipment, the proposed use of land outside that designated in the draft Site Lease Deed by the Endeavor Consortium, as well as delays in the proposed completion schedule, and a €20,000,000 shortfall in the investment required by the ElectroGas Consortium. Although matters brought to the attention of the Programme Review Board related to both bids, the NAO noted that the Committee only referred matters for legal consideration with respect to the submission by the ElectroGas Consortium.
- 3.7.20 Despite the considerable number of instances of non-compliance with the minimum requirements noted by the Stage 2 Evaluation Committee, the submissions by the ElectroGas Consortium and the Endeavor Consortium were recommended to proceed to the ensuing stages of evaluation. While the NAO is cognisant of the various shortcomings identified during Stage 2 of the RfP evaluation process, the Office acknowledges that the Committee was limited in terms of options available. In the circumstances, the NAO is of the understanding that allowing for the rectification of deviations from the minimum requirements at a later stage in the process represented a reasonable course of action.
- 3.7.21 Whereas Stage 2 of the RfP evaluation process focused on adherence to minimum requirements, Stage 3 sought to measure the additional technical, commercial and financial capabilities of the bidders. As stipulated in the RfP, Stage 3 was assigned a weighting of 20 per cent of the overall mark. The NAO deemed the criteria and sub-criteria for which marks were to be allocated as well designed and accurately corresponding to the additional capabilities that the Stage 3 Evaluation Committee sought to determine. Furthermore, the Office considered the criteria set as clearly defined, which eliminated subjectivity in the allocation of marks.
- 3.7.22 Notwithstanding this, there were a few instances where the NAO disagreed with the marks assigned by the Stage 3 Evaluation Committee. The Office noted that the Committee awarded the ElectroGas Consortium five marks out of a possible five for existing commercial arrangements

with one or more LNG suppliers, when such arrangements were not in place. The Committee sought to justify this award by making reference to the early stage in the project and that the relationship between Socar Trading SA and its portfolio of LNG suppliers was sufficient at this stage. The NAO is of the understanding that these marks were incorrectly allocated since the sub-criterion specified an existing commercial arrangement, which requirement was in fact met by the Endeavor Consortium, awarded similar marks in this respect.

- 3.7.23 With regard to the submission by the Endeavor Consortium, in the NAO’s opinion, the Stage 3 Evaluation Committee erroneously allocated a mark for a project under additional experience of the gas facilities EPC contractor, when this project had been cited in fulfilment of the minimum requirements. Similarly, the Committee incorrectly allocated a mark for additional experience of the gas facilities O&M contractor with respect to a particular project that had been proposed as part of the minimum requirements. In another case noted by this Office, the Committee did not allocate one mark to the Endeavor Consortium for additional experience of the financial adviser on a particular project. The argument put forward by the Committee in this regard was that the project cited as additional experience of the financial adviser had in fact already been submitted as evidence of a consortium member acting in a leading role in a project that had raised financing of €300,000,000. Although the NAO acknowledges that the project cited was the same, the Office contends that the extent of overlap of these criteria remained unclear.
- 3.7.24 Despite the inconsistencies noted by the NAO, this Office is of the understanding that these cases bore no significant impact on Stage 3 of the evaluation process and no effect on the final outcome of the selection process.
- 3.7.25 Stage 4 of the RfP evaluation process compared the bid price and terms put forward by the ElectroGas Consortium and the Endeavor Consortium. In accordance with that stated in the RfP, Stage 4 was assigned a weighting of 80 per cent of the overall mark. The criteria that were to serve as the basis of adjudication were also specified in the RfP. In the NAO’s opinion, this ensured an element of transparency and fairness in the adjudication process, as the basis of selection was declared at the outset, thereby creating a level playing field for potential bidders.
- 3.7.26 The evaluation at Stage 4 of the RfP was based on a pre-determined financial model established by DNV KEMA, which model reflected the criteria specified in the call. The NAO is of the opinion that the model was a valid tool for the financial evaluation of the complex bids submitted, allowing for the monetisation of the project over its lifespan through the synthesis of diverse variables into one comparable rate. Aside from bidder-specific inputs, other parameters that formed an integral part of the financial model were pre-determined and bidders accordingly notified through the RfP and subsequent clarifications. This Office is of the understanding that the a priori determination and publication of bid parameters also contributed towards the transparency of Stage 4 of the RfP evaluation process.
- 3.7.27 As part of its verification, the NAO reviewed the inputs plugged into the model by the Stage 4 Evaluation Committee and confirmed accuracy thereof with the relevant bid forms and clarifications. In addition, the Office also ascertained that the model calculations were uniformly

applied in both submissions, which provided an element of assurance with respect to Stage 4 of the evaluation process.

- 3.7.28 Notwithstanding this, the NAO noted a few instances where the model mechanics were adjusted by the Stage 4 Evaluation Committee following submissions by both Consortia that did not fit the structure of the financial model and the structure specified in the bid forms. A case in point was the submission by the ElectroGas Consortium of two base capacity charges for power, one for the fixed period and one for the indexed period of the PPA. Although the relevant bid form stipulated the submission of one value, the Stage 4 Evaluation Committee adjusted the financial model to allow for different rates, corresponding to the fixed and indexed period, to be inputted. Similarly, the Stage 4 Evaluation Committee adjusted the financial model to account for the complex multiplier submitted by Endeavor as part of its GSA bid parameters. In each case, the NAO considered the impact of the changes on the final price by modelling different scenarios. The changes bore no significant effect on the outcome of the Stage 4 evaluation process. Whether Enemalta was to allow for adjustments to be made to the model remains a moot point, and it is in this regard that the NAO maintains an element of reservation.
- 3.7.29 The NAO noted other instances where submissions by bidders were revised following clarifications sought by the Stage 4 Evaluation Committee. One such case resulted from the incongruence between the submissions made in line with the bid forms and the financial model. The source of this incongruence, relating to information regarding contract outage duration, was attributable to Enemalta. In addressing this incongruence, the Consortia were requested to submit revised values. Other cases where bidders were allowed to submit revised values related to instances of implausible values in submissions made identified by the Committee. This was the case for the relative part load heat rates submitted by the ElectroGas Consortium and the base start charges submitted by the Endeavor Consortium. Of note was another case of an identified implausible value identified by the Committee submitted by the ElectroGas Consortium for tendered gas availability. In rectifying the error, the Consortium resubmitted two options for the base gas availability charge. One option was based on the original values submitted, now excluding the PPA portion of gas provision, resulting in a tendered gas availability of 868.55 mmBTU/hr. The second option cited a value of 1,158.27 mmBTU/hr. For the second option, the base gas availability charge was revised from €1.242 to €0.9313, to retain the same gas availability payment amount. The Stage 4 Evaluation Committee opted to base its evaluation on the second option, as this reflected the correct interpretation of the GSA.
- 3.7.30 The Office noted other instances where bid parameter values were changed following insistence by the Committee that information be submitted in the correct format. For example, the annual capacity degradation factor, the annual efficiency degradation factor and the base start charge were to be resubmitted by the ElectroGas Consortium, while the Endeavor Consortium was requested to resubmit the tendered energy availability, the tendered heat rate and the base reactive energy charge.
- 3.7.31 Notwithstanding the multiple instances of changes to submissions by the ElectroGas Consortium and the Endeavor Consortium effected during Stage 4 of the evaluation process,

the NAO established that that these bore no significant impact on the outcome of this stage of the evaluation process and ultimately were of no consequence to the outcome of the selection process.

3.7.32 Finally, the NAO's attention was drawn to the possible conflict of interest of the Stage 4 Evaluation Committee Team Leader. More specifically, the NAO noted that the Team Leader was the Managing Partner of Nexia BT, which firm was the auditor of GEM Holdings Ltd, one of the shareholders of the ElectroGas Consortium. The declaration of impartiality signed by the Stage 4 Evaluation Committee Team Leader on 23 September 2013 stated that, "I am independent of all parties which stand to gain from the outcome of the evaluation process. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might call into question my independence in the eyes of any party, and, should it become apparent during the course of the evaluation process that such a relationship exists or has been established, I will immediately cease to participate in the evaluation process." The NAO established that all members of the various RfP Evaluation Committees were aware of the bidders shortlisted at the EoIC stage prior to the signature of the declaration. The Office sought to determine whether Nexia BT was the auditor of GEM Holdings Ltd at the time of adjudication of bids, as this would have been in clear breach of the declaration of impartiality. Queries to this effect were made with GEM Holdings Ltd and Nexia BT. The parties informed the NAO that Nexia BT were appointed auditors on 25 April 2014, which implied that the engagement of the auditors of GEM Holdings Ltd occurred after the conclusion of the RfP evaluation. An engagement letter to this effect was provided by GEM Holdings Ltd to this Office. The NAO sought to corroborate that stated with the Malta Financial Services Authority (MFSA). However, the MFSA indicated that specific information regarding the date of appointment of auditors was not available as companies were not required by the Companies Act (Chapter 386) to inform the MFSA of the appointment of the first auditors. According to Article 151(2), the first auditors of a company may be appointed by the directors at any time before the first general meeting at which the annual accounts are laid.

3.7.33 Stage 5 of the RfP evaluation entailed the aggregation of the scores arrived at by the Stage 3 and Stage 4 Evaluation Committees, which was to establish the Preferred Bidder and the Reserve Bidder. The NAO noted that the weighting as determined in the RfP was correctly applied to the marks obtained at Stage 3 and Stage 4 of the evaluation. This Office acknowledges that the outcome of the Stage 5 evaluation was referred to the Programme Review Board for its consideration, hence bringing the RfP evaluation process to a close, with the ElectroGas Consortium proposed as the Preferred Bidder.

3.8 The Role of the Programme Review Board

3.8.1 In the NAO's review of the EoIC and the RfP processes, the role of the Programme Review Board¹³ emerged as critical in terms of key decisions taken. The Programme Review Board was

¹³ It is to be noted that the Programme Sponsoring Group is at times referred to as the Programme Steering Board, the Programme Management Board or the Programme Review Board – Malta Power and Gas Programme; however these are one and the same team.

tasked with establishing the overall strategy and direction of the project, assigning resources to meet objectives, communicating the project vision and blueprint, authorising major deviations from agreed plans, signing off milestones achieved, agreeing on tolerances for time, quality and cost, and ensuring the maintenance of standards throughout the project.

- 3.8.2 According to Enemalta, the members of the Programme Review Board were the Executive Chair Enemalta, the Permanent Secretary MECW and a Consultant Architect, while meetings were also attended by the Chair Privatisation Unit and the Chief of Staff MECW. The Executive Chair Enemalta served as Chair to the Programme Review Board. Having reviewed the meeting minutes of the Programme Review Board, the NAO established that the Minister MECW and the Programme Director¹⁴ regularly attended the meetings of this Board. Others attended meetings of the Programme Review Board, depending on the matter under consideration. These included the Legal Consultants, DNV KEMA Consultants, the Project Consultants, as well as officials from the MECW Secretariat and Enemalta.
- 3.8.3 Although the project was driven forward by the Programme Review Board, the NAO noted the key role played by the various consultants engaged to assist with specific aspects. All engagements were made through direct contracts. Based on the information made available to the NAO, this Office estimated the cost of consultancy and other services rendered with respect to the project, sourced through direct contracts, as amounting to approximately €3,500,000. A detailed breakdown of all services utilised is provided in Appendix E.
- 3.8.4 Central to the project was the role fulfilled by DNV KEMA. Engaged by Enemalta in April 2013, DNV KEMA was to support the tendering process and assume a lead role with respect to the conduct of feasibility studies, the EoIC, the design of technical specifications, conversion of the Delimara 3 plant and the RfP. DNV KEMA was to report directly to Minister MECW and the Interim Project Director, understood by the NAO as the Programme Review Board, with regard to the process of organisation of the tender procedure and the content of any documentation related thereto. Aside from the involvement of DNV KEMA in the initial design of the project, technical assistance was provided at Stage 4 of the RfP evaluation process through the development of an RfP evaluation model. Furthermore, DNV KEMA assisted Enemalta in negotiations that ensued following the selection of ElectroGas Ltd as the preferred bidder.
- 3.8.5 The Programme Review Board met regularly between April 2013 and October 2013. Figure 23 provides an overview of meetings held and key developments registered therein. The developments noted must be considered in light of the EoIC, which was published on 11 April 2013, and the RfP, issued on 6 July 2013. Also relevant was the outcome of the EoIC evaluation process, which was concluded on 1 June 2013, as well as that of the RfP evaluation, finalised on 10 October 2013.

¹⁴ The Programme Director served as Chair of the EoIC Evaluation Committee and Chair of the RfP Stage 5 Evaluation Committee.

Figure 23: Meetings of the Programme Review Board

Date	Key developments
18 April 2013	- permitting issues discussed, multiple situations considered including onshore and offshore possibilities; - set issue date for RfP as 10 June 2013; - DNV KEMA and Gas Strategies approved as project consultants; - decision to commence SPC formation taken; - decision to appoint the technical evaluation committee for the EoIC process taken; and - Minister MECW provided feedback received regarding tight timelines for negotiation, generation capacity of the new plant and revisions to pricing quoted in the EoIC.
2 May 2013	- permitting process concerns expressed; - given the 18-month timeframe, the Board anticipated a floating storage solution despite incongruence with the EC Best Available Techniques reference documents which state that floating storage is not the best technique and only to be considered in case of an onshore option not being possible; - Enemalta was to discuss the provision of a government guarantee with the Attorney General; and - composition of the EoIC Evaluation Committee determined.
13 May 2013	- generating equipment of 200MW can be accommodated at Site A; - DNV KEMA reiterated that the onshore option for LNG infrastructure was better, yet the tight timelines excluded this option; - various offshore sites were considered, with the option of a new jetty at Site B preferred as this allowed for an onshore regasification facility and an FSU; - LNG storage capacity was discussed, which in turn bore effect on the frequency of shipments and the dimensions of the FSRU; and - concerns expressed regarding the visual impact of the FSRU.
22 May 2013	- the Project Description Statement was to indicate that while other options had been considered, the preferred option for electricity generation entailed a CCGT at Site A or Site B and, for LNG, a floating storage solution with either onshore regasification or part of the floating storage infrastructure.
11 June 2013	- discussed the RfP framework and the main terms and conditions in the form of the IA, PPA and GSA; - the value of the transaction was estimated at €4 billion to €5 billion, 10 per cent of which related to capital costs, while the remaining 90 per cent related to the cost of fuel; - tendering-related matters were discussed, mostly relating to changes in costs between the date of submission of bids and contract execution; - EoIC responses indicated that the FSRU would likely be leased while the CCGT would be a new plant; - noted was that on termination of the contract, the operator would have the right to sell the infrastructure to Enemalta, at which point Enemalta would be obliged to take up the offer;

	- duration of the term of the contract was discussed, suggested as 18 years as opposed to a more typical 25-year term; and - the Share Purchase Agreement was referred to, with a transaction value of €30,000,000 suggested.
12 June 2013	- Minister MECW provided an update of his visit to Qatar and indicated their interest in supplying LNG to Government or the bidders, among other matters. The RfP was to include the possibility of third-party supply, with bidders allowed to choose the cheaper between their own supply and the Qatari source; - publication in the EC Journal precluded negotiations, yet the Board resolved that bidders were to be allowed to propose changes to the agreements during the RfP bidding process; - reference was made to the government guarantee, which would have a significant impact on the financial standing of Malta; therefore, discussions with MFIN were to be undertaken; - DNV KEMA proposed the extension of the RfP submission deadline in view of the extensive work required in compiling a bid; - the project timeline was outlined, specifying by when bidding was to be concluded, evaluation undertaken and contracts signed. Proposed changes were to be discussed with the Prime Minister; and - fixed term pricing and liquidated damages were also discussed.
19 June 2013	- Consultants reporting to the Programme Review Board following the review of the key commercial agreements noted that: - very few companies had an FSU readily available for such a project; - the RfP publication date was too tight and the Board had agreed to extend the deadline to 1 July 2013; and - the evaluation methodology was to be simplified to encourage the submission of bids. - regarding the government guarantee, the guarantee instruments were to be presented to MFIN for its consideration and requirements in terms of money and term were to be specified; and - the Programme Review Board decided not to make any reference to the government guarantee in the RfP.
28 June 2013	- RfP-related issues that required clarification were discussed; - the setting up of a team to evaluate changes in membership of consortia post EoIC and during the RfP was addressed; - it was confirmed that the pricing formulas were audited by DNV KEMA; - noted was that the conversion of Delimara 3 was to take place after the commissioning of the new plant and so the term of the GSA was to be one year shorter than the PPA; - the framework of evaluation was discussed, which was to be based on the least cost of electricity over the lifetime of the contract; - the RfP was to allow for the submission of missing information post deadline in cases of inor incompleteness; - an updated timetable was set, with the RfP to be tentatively issued on 1 July 2013 and the announcement of the successful bidder scheduled for 15 October 2013; and

	- the Programme Review Board proposed a bid bond of €1,000,000 and performance bonds of €30,000,000 during the construction phase and €100,000,000 during the operative phase.
10 July 2013	- various matters relating to the EIA were discussed; - the Marsaxlokk Local Council enquired about the possibility to place the FSRU outside Marsaxlokk Bay. The Programme Review Board commissioned DNV KEMA to present a study in this regard; - it was suggested that three applications be presented to MEPA for: - the construction of a jetty; - the construction of an electrical plant; and - an application for the FSRU and breakwater (if necessary).
17 July 2013	- the Programme Review Board considered the evolving project definition, which now comprised a PPA through a plant that was to be installed on Site A and a GSA through a plant that was to be moored on a jetty at Site B; - DNV KEMA reported on the possible relocation of the FSRU outside of the Marsaxlokk Port, indicating an adverse opinion based on: - very few examples of such a set up making it experimental technology; - the base load nature of the demand, which rendered it unwise to expose the hull to all weather conditions; - the expensive and lengthy works required; and - the deep seabed around the area, which made it not ideal for the placing of pipes. - noted was progress registered in relation to the project, with the EoIC concluded, the Transaction Agreements drafted and the RfP issued; - the RfP evaluation was to be based on administrative compliance, minimum requirements, financial evaluation and weighted scoring; - acknowledged that the government guarantee was being evaluated by MFIN; - risk assessment-related findings were disclosed; - discussions regarding the construction of a breakwater ensued.
31 July 2013	- barge-mounted power plant solutions were discussed. Although in principle there were no difficulties in this respect, permitting was based on a CCGT being built on Site A; - government guarantee was discussed, with relevant implications with respect to state aid brought to the fore. This process was expected to take approximately six months. Noted was that the most favourable option was to have such a guarantee on the basis of security, that if Enemalta was not in a position to pay its dues, Government would purchase the electricity on the basis that this was in the national interest; - DNV KEMA estimated the cost of placing the FSRU in an offshore location at €444,000,000; - the Programme Review Board resolved that no preparatory civil works were to be undertaken by Enemalta prior to award; and - the EIB was carrying out due diligence on the project.
9 August 2013	- the Programme Review Board endorsed the recommendations of the EoIC Evaluation Committee with regard to the changes in the bidders' consortia;

	- the EIA was to be published on 19 August 2013 and the Board acknowledged the significant risk of bidders' submissions presenting solutions that were different from those considered in the EIA; - the wave motion study was presented and implications on the project discussed; and - the Board anticipated public opposition to the project and proposed mitigation through meetings with the various stakeholders.
21 August 2013	- the EIA was undergoing final review; and - no appeals were received following the announcement of the final shortlist of approved consortia.
30 August 2013	- the Programme Review Board was informed of progress registered, with specific reference made to permits and preparations undertaken for the evaluation of the RfP; - the key proposed changes to the Transaction Agreements were discussed, including force majeure events, termination conditions, Enemalta's obligation to purchase, decommissioning costs, financial close, berthing rights, lease term and insurance; - reference was made to the bidders' request for a guarantee for payment by Enemalta. The Programme Review Board proposed a security of supply agreement for the term of the contract, which would guarantee payment by Government should Enemalta default on payment. In addition, the Board proposed a letter of credit covering the residual value of the plant, addressing the obligation to purchase the plant in the event of termination.
9 September 2013	- the strategy that was to be adopted for the evaluation of RfP bids was presented to the Programme Review Board by the Programme Director; - the Board proposed the appointment of the Programme Director as Chair of the RfP Evaluation Committee; - enquiring whether Evaluation Committee decisions would be taken unanimously or by vote, the Programme Review Board was informed that evaluation was to be undertaken against set criteria defined in the RfP, thereby minimising the need for subjective judgement; - the RfP Stage 1 evaluation was to be overseen by a Notary and two Enemalta officials; - the evaluation of the various stages of the RfP was to be undertaken in parallel; and - the appointment of the evaluation committees was discussed, with specific reference made to DNV KEMA, SGS Italia SpA and RSM.
13 September 2013	- the persons that were to comprise the RfP evaluation committees were presented to the Programme Review Board by the Programme Director; - changes to the composition of the RfP evaluation committees were proposed to cover a wider range of skills and expertise; - the various stages of the evaluation process were explained to the Board by the Programme Director and the format of reporting discussed; and - the Programme Review Board proposed that the ICE Brent closing price on the day of the submission of bids was to be utilised in the evaluation process.
1 October 2013	- the Programme Director presented the status of evaluation, which had effectively commenced on 20 September 2013; - requests for clarification were issued to the ElectroGas Consortium and the Endeavor Consortium;

	- the Programme Review Board endorsed the recommended exclusion of the Yildirim Consortium on ground of its failure to submit a bid bond and state the price of gas; and - the implications of bids received on the EIA were discussed, with the major issues identified relating to the stacks, the jetty location and the regasification unit, indicating the need for updates to the EIA.
11 October 2013	- the Programme Director presented the outcome of the RfP evaluation process to the Programme Review Board. The outcome of this evaluation entailed the nomination of the ElectroGas Consortium as the Preferred Bidder and the Endeavor Consortium as the Reserve Bidder; - the Programme Review Board acknowledged the outcome of the evaluation process and indicated that the recommendations were to be ratified by the Enemalta Board of Directors; and - the Board decided to publicly announce the outcome of selection and inform both bidders.

3.8.6 Of note to the NAO was reference by the Programme Review Board, during the meeting held on 2 May 2013, to floating storage for LNG as the most probable technical solution given the 18-month project timeline. Nonetheless, the Board acknowledged that according to the Best Available Techniques reference documents issued by the EC, floating storage was not the best technique and was only to be considered in the event that an onshore option was not possible. The NAO sought to understand whether the timeframe set for completion of the project dictated resort to floating storage as the technical solution. Furthermore, the Office enquired as to the basis of the decision to opt for an offshore solution, when the EC only considered this in the event that an onshore option was not possible.

3.8.7 Queries to this end were addressed to the Minister MECW, the Chair RfP Evaluation Committee in his capacity as Programme Director, the Chair Programme Review Board and Enemalta. The Minister MECW indicated that the matter was referred to MEPA and clearance obtained in this respect. Moreover, the Minister MECW noted that legal counsel was also sought. On the other hand, the Chair RfP Evaluation Committee argued that at the time of publication of Best Available Techniques reference documents by the EC, offshore storage was not particularly prevalent. In addition, the Chair RfP Evaluation Committee maintained that the decision to resort to offshore storage was intended to mitigate risk to the Delimara plant in the event of a major accident. Reference was made to studies undertaken in connection with the submission of the development application, a point also made by the Chair Programme Review Board. Requests for such studies were raised with Enemalta; however, none were submitted by Enemalta.

3.8.8 On 19 June 2013, the Programme Review Board decided not to make any reference to the Government Guarantee in the RfP issued on 6 July 2013. Following queries made by the NAO, the Minister MECW stated that he could not recall specific details in this respect; however, noted that the presence of MFIN officials indicated that the Programme Review Board was considering various options.

3.9 Award of Contracts

- 3.9.1 As indicated in the preceding section, in its meeting of 11 October 2013, the Programme Review Board took note of the recommendation put forward by the Stage 5 Evaluation Committee and indicated that this was to be ratified by the Enemalta Board of Directors. To this end, an extraordinary meeting of the Enemalta Board of Directors was convened on 12 October 2013, wherein the Chair Stage 5 Evaluation Committee provided an extensive overview of the project. The Chair Enemalta Board of Directors subsequently presented a motion that the Board ratify the decision of the Programme Review Board wherein the ElectroGas Consortium was nominated as the Preferred Bidder and the Endeavor Consortium as the Reserve Bidder. Four members, including the Chair, voted in favour of the motion, while one member voted against, resulting in the Board's approval of the motion.
- 3.9.2 The ElectroGas Consortium was announced as the winning bidder by the Minister MECW on 12 October 2013. During a press conference, the Minister provided a brief summary of the process undertaken leading to the selection of the preferred bid and details regarding the configuration of the power plant, the regasification unit and the FSU. Although the rates at which the Consortium was to sell energy to Enemalta were not announced, the Minister MECW asserted that these were advantageous and that the contract was to be signed as soon as the Consortium secured the required financing.
- 3.9.3 Subsequently, on 13 October 2013, correspondence was submitted to the ElectroGas Consortium by Enemalta wherein the Consortium was informed of its nomination as the Preferred Bidder. Cited in the correspondence was that the Board of Directors of Enemalta was endorsing the recommendation of award by the Programme Review Board. A final mark of 92.2 per cent was obtained based on a final blended price of €95.99/MWh. Enemalta made reference to a number of outstanding issues that were to be rectified by the Consortium prior to the effective date. These issues included:
- a. approval for the full investment amount of €370,000,000, due to a shortfall of €20,000,000 that was not appropriately sanctioned by the respective Board of Directors of the Companies forming the Consortium;
 - b. the provision of a letter of commitment from an identified LNG supplier;
 - c. matters relating to the design of the power plant, specifically citing the heat recovery steam generators that would need to accommodate the future potential installation of an SCR; and
 - d. appropriate mitigating measures to minimise any potential noise impact on the communities of Marsaxlokk and Birżebbuġa.

- 3.9.4 In addition, the ElectroGas Consortium was to confirm acceptance of all material conditions set out in the Transaction Agreements, subject to adjustments raised by Enemalta later on in the process. Enemalta indicated that a commencement date and a maximum period allowed for discussions were to be established with a view to finalise the Transaction Agreements. Failure to reach agreement would result in the withdrawal of the Preferred Bidder status. Despite queries by the NAO, Enemalta indicated that it could not trace the reply by the ElectroGas Consortium confirming its acceptance.
- 3.9.5 The Endeavor Consortium was informed of the outcome of the RfP evaluation and its placing as the Reserve Bidder on 13 October 2013. According to this correspondence, the bid by the Consortium placed second with a mark of 71.33 per cent, which result was based on a final blended price of €115.27/MWh.
- 3.9.6 Enemalta made reference to the issues identified by the RfP evaluation committee that were not in line with the requirements of the RfP. These included:
- a. a project completion of 26 months rather than the requested 24-month timeframe;
 - b. a workshop, laboratory and storage building that were to be located in a temporary facilities area due to the limited space provided on Site A;
 - c. the use of existing self-cleaning filters rather than the installation of new ones;
 - d. that the chimneys proposed were to be externally insulated up to the area where personnel had access;
 - e. areas that extended beyond the limits of Site A;
 - f. minor discrepancies identified in the design ambient temperatures of the plant;
 - g. the failure to identify the manufacturers of certain major equipment; and
 - h. alterations to the Transaction Agreements that the RfP evaluation committee deemed unacceptable.
- 3.9.7 By way of conclusion, the Endeavor Consortium was informed of their right to file a complaint in accordance with the Procurement (Energy and Fuels) Appeals Board Regulations, Legal Notice 155 of 2013, within six days of the publication of this decision against a deposit of €58,000.
- 3.9.8 Although the Endeavor Consortium did not lodge an appeal, various objections were raised in correspondence submitted to Enemalta on 17 October 2013. In this respect, the Consortium

provided a number of clarifications in reply to the shortcomings identified by Enemalta in its letter dated 13 October 2013. With regard to the project completion timeline of 26 months, the Consortium stated that it was impossible for a bidder to complete the project within 24 months and since delay liquidated damages were included as part of the process, the Consortium opted for a two-month delay. With respect to the location of temporary facilities in certain areas, the Consortium maintained that this was incorrect and reference was made to a drawing that illustrated the cited structures as situated in Site A.

- 3.9.9 In respect of the self-cleaning filters, the Endeavor Consortium clarified that for the auxiliary cooling system, new self-cleaning filters would be installed. Additional filters were not proposed since, according to the provisions in the RfP, the existing self-cleaning filters would be used. With regard to the chimneys, the Consortium indicated that external insulation on gas-fired plants with low fuel gas exhaust temperatures was not required, due to the low exhaust temperature. The Consortium also noted that full insulation systems were not typically utilised in natural gas-fired combined cycle plants.
- 3.9.10 In terms of the additional area to Site A, which required the demolition and relocation of existing buildings to other areas, the Endeavor Consortium clarified that it proposed the demolition of existing structures only if necessary, and the cost of rebuilding was to be at the Consortium's expense. In respect of the minor discrepancies in the design ambient temperatures of the plant, the Consortium disagreed with Enemalta's comments and stated that, in its proposal, reference was made to the yearly average as stipulated in the Minimum Functional Specifications. In addition, the Consortium clarified the issue regarding unidentified optional manufacturers for some of the equipment, arguing that the manufacturers were identified in Bid Form 11.8. Notwithstanding this, the Consortium noted that it was unable to specify all manufacturers due to time constraints imposed in adhering to the bid submission deadline.
- 3.9.11 With regard to the reservations that the Endeavor Consortium had identified in respect of the Transaction Agreements, the Consortium maintained that it was unrealistic of Enemalta to expect any bidder to enter into such agreements as drafted. In its correspondence, the Consortium noted that its reservations were clearly outlined in an Appendix to Bid Form 1. In support of its argument, the Consortium drew attention to the contradiction between the statement issued by the Minister MECW and that by Gasol plc, with the Minister indicating that the agreements would be executed in a couple of days, and Gasol plc stating that the execution of the contracts was expected to take several months.
- 3.9.12 In its correspondence, the Endeavor Consortium also expressed uncertainty as to how Enemalta had arrived at a Final Blended Price of €115.27 and requested clarification. The Consortium requested a copy of the detailed scoring awarded to it in each of the five stages of evaluation. Moreover, the Consortium requested the basis on which the ElectroGas Consortium was selected as the Preferred Bidder in terms of Regulation 33(a)(ii) of the Procurement (Energy and Fuels) Appeals Board Regulations (Legal Notice 155, 2013) and thereby sought a comparison of the scoring between the two bids. In conclusion, the Consortium reiterated its willingness to execute the project should the proceedings with the Preferred Bidder fail.

- 3.9.13 Enemalta confirmed that the Endeavor Consortium was allocated Reserve Bidder status in terms of the RfP in its reply dated 21 October 2013. Furthermore, Enemalta stated that the issues highlighted in earlier correspondence were intended for the consideration of the Consortium in the event that discussions with the Preferred Bidder proved inconclusive.
- 3.9.14 The notice of award was eventually published on 4 December 2013, wherein Enemalta resolved that the offer by the ElectroGas Consortium be recommended for award. According to the notice, the Consortium obtained an overall score of 92.2 points with a Final Blended Price of €95.99 per MWh. The decision was subject to any official complaint in accordance with the provisions of the Procurement (Energy and Fuels) Appeals Board Regulations, 2013. No complaint was lodged in this respect.

3.10 On the Consideration of Alternatives

On Plant, Site and Layout

- 3.10.1 The NAO sought to establish whether any alternative projects and/or models that would have achieved the set objectives were considered. According to the minutes of the Programme Review Board meeting of 19 June 2013, the intended outcomes of the project comprised a 25 per cent reduction in utility bills by April 2014, price stability, the turnaround of Enemalta to breakeven point, the diversification of the energy mix for greater security of supply and the reduction of carbon emissions to sustainable levels. When queried with regard to the alternatives considered, Enemalta made reference to the EIA, which in turn made reference to the Environmental Impact Statement (EIS). The EIS outlined the alternative sites, technologies and layouts considered, as well as the downscaling of the project.
- 3.10.2 The only site found suitable for the proposed development was the Delimara Power Station. This decision was based on its location, deemed to be at a safe distance from the closest community, Marsaxlokk. Moreover, the power distribution infrastructure was organised in such a manner so as to preclude other areas from consideration as realistic and suitable alternatives for such a development.
- 3.10.3 In the consideration of alternative technologies, the EIS made reference to options in terms of fuel type and power plant. With respect to fuel alternatives, noted in the EIS was that a natural gas-fired CCGT facility was in line with a policy decision by Government, presumably, the National Energy Policy for the Maltese Islands 2012, and also in accordance with the Action Plan for the Electricity Sector of the National Energy Plan 2012. With regard to the types of power plant, the Enemalta Energy Generation Plan 2006 indicated that the cost of electricity could be minimised through the installation of gas-fuelled CCGT units. These installations were anticipated to address the expected emission limits set by the EC with respect to certain pollutants. While the emissions generated through the use of the interconnector were not to have an adverse impact in terms of the EC directive, a gasoil-fuelled CCGT plant would generate

emissions just within these limits. This rendered the proposed combined use of a CCGT plant and the interconnector as the preferred option from a technology perspective.

- 3.10.4 In terms of alternative layouts, three options relating to the proposed layout of the CCGT and LNG facilities were considered. The preferred options for the CCGT and the LNG facilities were primarily based on the assessment of risk of all the elements of the proposed development. According to the EIS, the offshore option outside of the port of Marsaxlokk was not considered in view of the limited sea-room available for a shallow-water platform fixed to the sea bed and no experience of installing an FSRU at a floating connection point to supply gas. In addition, any FSRU moored outside Marsaxlokk harbour, including its attendant pipeline, was likely to represent an obstacle to shipping, and the exposure to severe adverse weather conditions outside the shelter afforded by Marsaxlokk harbour would reduce the ability of the FSRU to receive fuel from supply carriers. These conditions were considered too risky in terms of security of supply.
- 3.10.5 With regard to the possible downscaling of the project, the EIS indicated that this could not be considered due to the fact that the Marsa Power Station was to be decommissioned on the installation of the interconnector, Delimara 1 was to be replaced by the proposed CCGT plant, and Delimara 2A and 2B were to be retained as reserve plants. In the circumstances, only the proposed 215MW CCGT plant would be capable of taking over the 200MW interconnector in case of a serious fault.
- 3.10.6 The NAO is of the understanding that in its consideration of alternatives, Enemalta prioritised adherence to the energy policy applicable at the time. This Office reviewed the National Energy Policy for the Maltese Islands 2012 and ascertained that reference was in fact made to a strategy driven by diversification from the use of oil as an energy source, while ensuring security of supply. Furthermore, this Policy specifically indicated resort to natural gas as integral in changing generating capability. The National Energy Policy for the Maltese Islands was published in 2012 and therefore pre-dated the design of the EoIC and the RfP.
- 3.10.7 While the choice of plant was dictated by applicable policy, and the identification of sites was driven by practical considerations and infrastructural limitations, an element of reservation persists with regard to the layout of the facilities, specifically in terms of resort to an offshore solution as opposed to the onshore storage of gas. The NAO's attention was drawn to that recorded in the minutes of the Programme Review Board, wherein the technical experts engaged by Enemalta clearly outlined that an onshore option for LNG infrastructure was better than the offshore alternative. According to the minutes, this was in line with the Best Available Techniques reference document issued by the EC, which indicated that floating storage was not the best technique and should only be considered when the onshore option was demonstrated as not possible. The NAO sought to corroborate that stated by the Programme Review Board through reference to the EC publication titled 'IPPC: Reference Document on Best Available Techniques on Emissions from Storage'. Clearly stated in this document was that floating storage was not considered a Best Available Technique; however, this could not be excluded,

with the document citing details on how to control emissions generated. The NAO noted that ElectroGas Ltd was granted a derogation from this particular Best Available Technique in the IPPC subsidiary permit issued to it.

On the Procurement Model

- 3.10.8 Having reviewed the EoIC and the RfP, the NAO is of the understanding that Enemalta designed its model of procurement as centred around two supply contracts, that is, the PPA and the GSA. Initially, through the EoIC, Enemalta considered the submission of bids for partial solutions, allowing bidders to limit their interest to either of the supply contracts. However, in the RfP, Enemalta restricted bidders to submissions that encompassed complete solutions for the supply of power and gas through the PPA and the GSA, respectively.
- 3.10.9 The NAO sought to establish whether Enemalta’s decision to opt for this procurement model was the result of the consideration of other models. According to Enemalta, having established the economic, commercial, technical and environmental viability of the project, attention was directed at how the project was to be implemented and financed. Enemalta indicated that several options were considered, namely:
- a. Internal development by Government and/or Enemalta - under this option, Government and/or Enemalta would take full ownership of the project. This would have involved the undertaking of a number of complex contracting and operational activities including but not limited to the issue of separate competitive tenders for the power and gas facilities, the construction of the jetty, the sourcing of LNG from a third party provider, the independent hedging against ICE Brent futures, foreign exchange hedging as well as the eventual operations and maintenance of the entire facilities, together with full exposure to the project risks. Enemalta maintained that neither Government nor Enemalta had any experience and expertise in the LNG and natural gas industries, which limitation would have further increased the level of project risk. Finally, internal development would have required either Government or Enemalta to directly finance the project. Enemalta indicated that financing the project internally was not considered an ideal option given the debt accumulated by Government and Enemalta.
 - b. Management agreement: In order to address the current gaps in knowledge and experience of Government and Enemalta in the LNG industry, a management agreement could have been established with a third party operator to act as a wraparound project manager for the whole initiative. Notwithstanding this, either Enemalta or Government would still have had to source the necessary financing for the project and bear the corresponding risks. Enemalta indicated that given the separation of responsibilities between the financing and operation of the project under this option, accountabilities for key milestones and performance indicators would have become hard to define.

- c. Issue of a GSA and internal development of the power plant facility: Under this option, the power plant infrastructure would be developed internally while the gas infrastructure and facilities would be provided by a third party through a gas supply agreement through which natural gas requirements for Delimara 3 and Delimara 4 would be sourced. Enemalta noted that this option presented a number of advantages. In the first instance, Enemalta was already an experienced power plant operator and had successfully managed the construction and development of a variety of power plants. In the second instance, the gas supply infrastructure (the part of the project which carried the highest risk) would be sourced to an independent provider who would be better placed and more knowledgeable than Enemalta on the development and operations of the gas facilities. On the other hand, apart from the obligation to finance the construction and development of the power plant, Enemalta would also be responsible for the operation of the power plant in all circumstances, including instances of unavailability. Moreover, the separation of the development of the power and gas facilities would create additional contractual complexities and an interface risk, as well as grey areas for accountability and responsibility. Enemalta claimed that this option would have run counter to its strategy to focus its activities on electricity distribution rather than generation.
- d. Tolling agreement: Enemalta also considered the possibility of issuing an expression of interest for a tolling agreement for the power and gas facilities. Under a tolling agreement, the successful bidder would effectively be responsible for the design, construction and operation of the power and gas facilities. Nevertheless, Enemalta indicated that it would still be required to source its own LNG supply and deliver it to the operator of the facilities. In Enemalta's understanding, this posed a series of disadvantages. In the first instance, Enemalta did not have the necessary knowledge and experience in the management and operation of LNG supplies. According to Enemalta, given the dynamics of the LNG industry, the management of the LNG supply chain remained the highest risk element in the project, particularly following the completion of the construction stage. Under a tolling agreement, Enemalta would retain full responsibility for the sourcing and scheduling of LNG cargoes. In particular, the risk of shortage and non-delivery of gas would still be borne by Enemalta since energy and gas availability payments would still need to be paid to the operator. Moreover, this option also bore an impact on the liquidity of Enemalta since the sourcing and payment for stocks of LNG would be incurred well in advance of when such supplies are used to generate power and natural gas in the process.
- e. PPA and GSA: According to Enemalta the implementation of the project through a PPA and a GSA presented the least risk option for Enemalta. Under this scenario, the private operator would be responsible for all activities associated with the design, development and operation of the facilities, as well as the sourcing of LNG. Through a PPA and GSA, Enemalta would benefit from a faster throughput in the realisation of the project, which would be undertaken by an experienced operator. Given that the private sector would own the entire value chain, accountabilities and responsibilities would be well-defined. Moreover, the project would be entirely financed by the private sector, which would in

turn have to assume ownership of the LNG supply chain in order to generate the required power and gas supplies as stipulated in the agreements. Finally, Enemalta maintained that a key objective of the project would be ensuring an appropriate level of price stability. In the absence of a PPA and a GSA, such stability could only be achieved through hedging of the price of gas against the price of Brent. This would also involve a significant degree of cash margining.

Enemalta maintained that it was in the context of these options that it was resolved that the most appropriate manner in which the project could effectively be implemented was through the issue of a PPA and a GSA.

3.10.10 Queries regarding the consideration of alternative procurement models were put to the Minister MECW and the Chair RfP Evaluation Committee in his capacity as Programme Director. The Minister MECW indicated that the procurement model was influenced by geographical and economic considerations, with the smallness of the island and a limited market constraining choice in this regard. Moreover, the Minister MECW argued that other models to that implemented would have increased complexity and would have moved away from the concept of risk transfer. Ultimately, the Minister MECW justified structuring procurement through a PPA and GSA by referring to the pre-election proposal and the political imperative to see this project to completion. This view was resonated by the Chair RfP Evaluation Committee, who noted that the decision to resort to this form of procurement model was taken at a political level. Elaborating in this respect, the Chair RfP Evaluation Committee maintained that other models were informally considered; however, any analysis undertaken was conditioned by the precarious financial situation that Enemalta was in at the time.

3.10.11 Despite requests for documentation in support of the options identified by Enemalta, the NAO was not provided with evidence of analysis undertaken prior to the commitment to procure power and gas from one supplier. Enemalta maintained that all options were thoroughly discussed and analysed verbally in internal meetings held, and that the explanations provided to this Office captured the gist of the analysis undertaken and the reasoning leading to the adoption of the PPA and GSA model. Notwithstanding this, the NAO deemed the response submitted by Enemalta outlining the various options as superficial, in that a true comparison of the costs and benefits of the alternatives considered could not be undertaken given the limited information available. Moreover, the proximity of issue of the EoIC to the change in administration renders the due analysis of alternative procurement models as highly unlikely, with the EoIC issued a mere one month after this change. In the absence of documentation rendering evident the consideration of alternatives, the NAO’s concerns regarding the design of the procurement process emerge.

3.10.12 Aside from these concerns, the NAO maintains an element of reservation regarding certain aspects of that stated by Enemalta. With regard to the option involving the development of the project by Government and/or Enemalta, this Office notes that while this option presents complex contracting and operational activities, Enemalta has experience in matters relating

to the procurement, operation and maintenance of plants. While the NAO acknowledges that Enemalta lacks expertise in the sourcing of LNG, it is to be noted that it has considerable experience in the procurement of related fuels. These limitations could have been mitigated through a management agreement, an option conceded by Enemalta. In this Office's understanding, the main limitation to the development of the project by Government and/or Enemalta related to its financing. Although concerns raised in this respect are valid, the absence of detailed analysis, clearly illustrating the costs and benefits of this option, precludes the Office from forming an opinion, based on facts, in this regard.

3.10.13 With regard to the scenario whereby Enemalta would develop the power plant facility and separately issue a GSA, Enemalta recognised its expertise in the construction and development of various power plants and that outsourcing the gas supply infrastructure represented a valid option. While concerns relating to the financing of the project persist, again unaided by the absence of any comparative analysis required to assess the various scenarios, the NAO maintains reservations regarding the other concerns identified. In the Office's opinion, the shifting of responsibility for the operation of the power plant to a third party comes at a cost and it is in this respect that comparison of this scenario with one where Enemalta retained responsibility for the operation of the plant was not possible as the required analysis was not undertaken. Instances of unavailability are to be considered as a sub-component of this analysis and could have been accordingly factored in. While the Office acknowledges that the separation of the development would have created additional contractual complexities, it must be noted that the present contractual framework is equally complex. In addition, the interface risk cited by Enemalta could have been mitigated through a robust contractual framework. With regard to Enemalta's claims that this option would have run counter to its strategy to focus on electricity distribution rather than generation, the NAO remains somewhat sceptic, particularly in view of information readily available on Enemalta's website, wherein it is stated that, "In recent years, the Company launched unprecedented investments to transform its electricity generation infrastructure, reinforce the distribution network, consolidate the quality of its services and achieve long-term financial sustainability. As a result of this transformation, Enemalta is now producing electricity through an efficient and environment-friendly mix comprising new gas-fired plants, imported electricity through the Malta-Italy Interconnector and grid-connected renewable energy sources."

3.10.14 In respect of a possible tolling agreement being entered into by Enemalta, the NAO deems the concerns regarding the dynamics of the LNG industry as valid. However, in the absence of substantiating documentation, the Office is unable to determine the extent of the risks identified.

Chapter 4

Overview of Agreements

4.1 Laying the Groundwork

- 4.1.1 The ElectroGas Consortium was selected by Enemalta following a competitive tender procedure for the supply of gas and electricity required to meet present and anticipated power demands in a safe, dependable and economic manner, and in observance of health, safety and environmental requirements. The ElectroGas Consortium was to supply electrical energy through a new generating unit under the conditions stipulated in the PPA and to supply natural gas from a new gas plant to Delimara 3, as provided in the GSA.
- 4.1.2 In order to facilitate the project, Enemalta had initially set up a company, Malta Power and Gas Ltd, to undertake preliminary work, such as the securing of permits and the commissioning of studies. Enemalta sold its shareholding in Malta Power and Gas Ltd to the ElectroGas Consortium, as contemplated in the RfP and formalised in the Share Purchase Agreement entered into on 9 May 2014. By virtue of this agreement, Enemalta transferred its shares in Malta Power and Gas Limited to Gasol plc, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, for a total consideration of €10,000. The transferees and Malta Power and Gas Ltd acknowledged and accepted that the latter was to reimburse Enemalta an amount of €30,000,000 for services rendered, to be invoiced at a future date. The Company changed its name to ElectroGas Malta Ltd on 9 July 2014 (referred to as ElectroGas Ltd throughout the report). Subsequent agreements relating to the project were entered into by Government and Enemalta with ElectroGas Ltd.
- 4.1.3 It was in this context that ElectroGas Ltd was tasked with the design, build and operation of the onshore CCGT Delimara 4 power plant and the FSU. Furthermore, ElectroGas Ltd was required to source a minimum supply of LNG for use by the Delimara 4 and Delimara 3 plants. The investment in infrastructure was to be fully financed by ElectroGas Ltd, with the Company having formal title to the assets. Accordingly, a number of contracts necessary for the operation and maintenance of the project were entered into in 2014 and 2015.
- 4.1.4 ElectroGas Ltd secured title to the area of sea required in terms of the project on 12 December 2014. To this end, ElectroGas Ltd and the Authority for Transport in Malta entered into the Exclusive Berthing Rights Agreement, whereby the Authority granted ElectroGas Ltd the exclusive right to use, occupy, enjoy, administer, operate and manage a specific sea area.

- 4.1.5 Similarly, on 16 December 2014, Enemalta and ElectroGas Ltd entered into a Site Lease Deed¹⁵, whereby Enemalta sublet the premises wherefrom the Company was to undertake project-related business. Specifically, ElectroGas Ltd was to construct, install, develop, operate and maintain its energy facilities therein. The term of the Site Lease Deed was for a fixed period of 22 years from the commencement date.

4.2 The Supply Agreements

- 4.2.1 Key contractual developments were registered on 14 April 2015, when Enemalta and ElectroGas Ltd entered into a series of agreements, namely the IA, the PPA and the GSA, collectively referred to as the Supply Agreements. In sum, the Supply Agreements outlined the terms that were to regulate the supply of electricity and gas to Enemalta by ElectroGas Ltd. More specifically, the:

- a. IA provided the framework of responsibilities and obligations that were to be borne by Enemalta and ElectroGas Ltd in terms of the project. Among other matters, the IA established the dates of commencement and completion of the key stages of the project. 14 April 2015 was determined as the start date, with the scheduled delivery date for energy and gas set at 24 months after this date. In terms of the IA, Enemalta was to provide ElectroGas Ltd with regular forecasts specifying the amount of net electrical output and the amount of gas that was to be dispatched and nominated from the Delimara 4 and the gas facilities. Furthermore, according to the IA, Enemalta committed to buy minimum volumes of electrical output and gas to allow ElectroGas Ltd to enter into long-term LNG supply agreements essential for the performance of its obligations. This commitment by Enemalta was governed by a 'take or pay' provision, obliging Enemalta to consume or pay for agreed quantities of gas, utilised as gas for Delimara 3 or as electricity from Delimara 4, over specified reference periods. Given Enemalta's significant reliance on electricity and gas supplied through this project, it was fundamental that, at all times during the 18-year term of the agreement, ElectroGas Ltd was able to display compatibility with Enemalta's infrastructure and the electricity's distribution network, conformity with all licence and permit conditions and observance of agreed business security criteria relating to security of energy supplies. To this end, the IA stipulated the minimum functional specifications for the plants. The IA also defined the billing and payment terms that were to be adhered to by the parties. Other matters considered in the IA related to insurance cover requirements, performance guarantees, and liabilities and indemnities in respect of claims emanating from the agreements. Also outlined in the IA were the measures that were to be followed in case of the termination of the agreements by any of the parties and the resolution procedure that was to be employed in case of disputes.
- b. PPA regulated the technical and commercial terms and conditions under which electricity was to be sold to Enemalta by ElectroGas Ltd. In terms of this 18-year agreement, ElectroGas

¹⁵The Site Lease Deed was referred to as the Site Lease Agreement during the RfP stage of the process.

Ltd agreed to, among other matters, supply the requisite energy, energy availability, and ancillary services to Enemalta through Delimara 4 in return for payment by Enemalta of the tariff pursuant to the PPA's terms and conditions. Specified in the PPA were key project milestones, such as the open cycle energy delivery date and the energy delivery date, which were to be achieved by ElectroGas Ltd. The PPA stipulated the testing methods and parameters that were to be employed in determining whether requirements were met. In the eventuality of delays, the PPA outlined the charges that were to be levied by Enemalta on ElectroGas Ltd.

- c. GSA allowed for Enemalta to procure gas from ElectroGas Ltd to operate Delimara 3, in accordance with the terms and conditions therein. The GSA further regulated the technical and commercial terms and conditions under which gas was to be provided. The term of the Agreement was of 18 years. Stipulated in the GSA were the terms and conditions that regulated ElectroGas Ltd's agreement to supply the requisite gas and gas availability to Enemalta through the gas facilities in return for payment by Enemalta of the tariff established in the Agreement. Among other matters addressed in the GSA, reference was made to the quality of gas that was to be supplied as well as to provisions intended to meter the quantities of gas delivered and sold to Enemalta.

- 4.2.2 Deemed essential in terms of the framework of supply was the SSA. Through this Agreement, Government was to ensure that, should any circumstance materialise which could potentially lead to the termination of the Supply Agreements, the Government would be able to ensure continuity of security of an uninterrupted supply of electrical power in Malta, under the same terms and conditions of the Supply Agreements. However, this Agreement was not entered into simultaneously to the Supply Agreements, pending the outcome of the EC's decision regarding possible implications of state aid. This resulted in a delayed entry into the SSA, in fact signed on 15 December 2017. Details of this Agreement are reported on in chapter 12.

4.3 Direct and Other Transaction Agreements

- 4.3.1 On 13 April 2015, Enemalta entered into a series of Direct Agreements relating to the purchase of LNG and the FSU. In essence, these were meant to allow for Enemalta to replace ElectroGas Ltd in its agreements with third parties should certain circumstances arise. The Direct Agreements comprised the:

- a. Enemalta – LNG Sale and Purchase Agreement (SPA) Direct Agreement, entered into by Enemalta, Socar Trading SA and ElectroGas Ltd. In this Direct Agreement, it was noted that in order to carry out its obligations pursuant to the IA, ElectroGas Ltd had entered into a long-term LNG SPA with Socar Trading SA for the shipment of LNG to the ElectroGas Ltd facilities. Through this Direct Agreement, it was guaranteed that should certain circumstances occur, resulting in the termination of the LNG SPA or the IA, Enemalta could be assigned and novated the LNG SPA;

- b. FSU – Enemalta Bridge Direct Agreement between Enemalta, ElectroGas Ltd, Armada Floating Gas Storage Malta Ltd (the FSU owner) and Armada Floating Gas Services Malta Ltd (the FSU Operator). Among other matters, through this Agreement, Enemalta, Government or a Government subsidiary was to take an assignment and novation of the FSU Conversion and Charter Agreement and the FSU O&M Agreement in certain circumstances, thereby assuming responsibility for the obligations held by ElectroGas Ltd with third parties arising out of other agreements. These agreements were the FSU Conversion and Charter Agreement between Armada Floating Gas Storage Malta Ltd and ElectroGas Ltd and the FSU O&M Agreement between Armada Floating Gas Services Malta Ltd and ElectroGas Ltd;
- c. FSU – Enemalta Charter Direct Agreement, entered into by Enemalta, ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd. Through this Agreement, it was ensured that should certain circumstances materialise resulting in the termination of the IA, Armada Floating Gas Storage Malta Ltd could be paid certain termination costs or Enemalta be assigned and novated the FSU Conversion and Charter Agreement; and
- d. FSU – Enemalta O&M Direct Agreement between Enemalta, ElectroGas Ltd and Armada Floating Gas Services Malta Ltd. In acknowledgement of the fact that the terms of the FSU O&M Agreement and the FSU Conversion and Charter Agreement were interconnected, such that the provision of the services by Armada Floating Gas Services Malta Ltd under the FSU O&M Agreement were essential to allow ElectroGas Ltd to fully enjoy its rights under the FSU Conversion and Charter Agreement, this agreement was entered into to ensure that the FSU O&M Agreement is novated to Enemalta at the time that the FSU Conversion and Charter Agreement was novated to Enemalta in accordance with the FSU – Enemalta Charter Direct Agreement.

4.3.2 Also on 14 April 2015, Enemalta and ElectroGas Ltd entered into two other agreements, namely, the Site Services Agreement and the Electricity Connection Agreement. Under the terms of the Site Services Agreement, Enemalta was engaged by ElectroGas Ltd to provide certain services relating to the construction phase and operation phase of Delimara 4 and the operation phase of the gas facilities. These services included the provision of potable water, as well as access to fire-fighting systems, seawater cooling water systems and the sewage system. Through the Electricity Connection Agreement, Enemalta granted ElectroGas Ltd the right to connect Delimara 4 to the network at the connection point. In consideration for the facility to connect to the network, ElectroGas Ltd was to pay Enemalta a one-time charge of €250,000 and a monthly payment of €2,000 from the connection date up to the expiry of the term.

4.3.3 All of the aforementioned agreements were collectively referred to as the Transaction Agreements. These comprised the Share Purchase Agreement, the Site Lease Deed, the Enemalta – LNG SPA Direct Agreement, the FSU – Enemalta Bridge Direct Agreement, the FSU – Enemalta Charter Direct Agreement, the FSU – Enemalta O&M Direct Agreement, the IA, the PPA, the GSA, the SSA, the Site Services Agreement and the Electricity Connection Agreement. Collectively, the Transaction Agreements regulated all aspects of the contractual relationship

between Enemalta, ElectroGas Ltd and other parties with respect to the project. Through these agreements, ElectroGas Ltd became the principal source of gas supplied to Enemalta, and, consequently, the main source of energy for Malta.

- 4.3.4 Enemalta, ElectroGas Ltd, Gasol Malta Ltd, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA signed a Side Letter as an interim arrangement, pending the sanctioning of the EC that the SSA and the Transaction Agreements were compliant with state aid rules applicable in the EU. Stipulated in the Side Letter, dated 14 April 2015, was that the Transaction Agreements were to be placed in escrow pending a positive decision by the EC. In the event that the EC deemed that certain changes to the Transaction Agreements were required in order to comply with state aid rules, the signatories to the Side Letter were to negotiate amendments to the Agreements.

4.4 Other Project-related Agreements

- 4.4.1 Although not part of the Transaction Agreements, on 14 April 2015, Government and Socar Trading SA entered into an LNG Security of Supply Agreement (LNG SSA). According to the LNG SSA, given the considerable insecurity of supply in the future global LNG market, the Government, as Enemalta’s majority shareholder, sought to secure a clear obligation from Socar Trading SA to continue to supply LNG to the plant even in the event of circumstances that would otherwise permit Socar Trading SA to cease supply.
- 4.4.2 Another project-related agreement was the Plant Manning Agreement, entered into between ElectroGas Ltd, Engineering Resources Ltd (ERL) and ESBI Engineering & Facility Management Ltd (ESBI) on 19 February 2016. Through the Plant Manning Agreement, ElectroGas Ltd and ESBI engaged ERL, a subsidiary of Government, to provide human resources for deployment in connection with the generation and supply of electricity by ElectroGas Ltd to Enemalta through the electricity generating facility.

4.5 An Overview of Agreements Entered Into

- 4.5.1 For ease of reference, an overview of all project-related agreements is presented in Figure 24. Aside from the classification of agreements as Transaction Agreements, Supply Agreements and Direct Agreements, reference was made to Project Agreements, which collectively were the IA, the PPA, the GSA, the Site Services Agreement and the Electricity Connection Agreement.

Chapter 4

Figure 24: Overview of project-related agreements

Agreements	Date of Agreement	Transaction Agreements	Supply Agreements	Direct Agreements	Project Agreements
Share Purchase Agreement	09/05/2014	✓			
Exclusive Berthing Rights Agreement	12/12/2014				
Site Lease Deed	16/12/2014	✓			
Enemalta-LNG SPA Direct Agreement	13/04/2015	✓		✓	
FSU – Enemalta Bridge Direct Agreement	13/04/2015	✓		✓	
FSU – Enemalta Charter Direct Agreement	13/04/2015	✓		✓	
FSU – Enemalta O&M Direct Agreement	13/04/2015	✓		✓	
Implementation Agreement	14/04/2015	✓	✓		✓
Power Purchase Agreement	14/04/2015	✓	✓		✓
Gas Supply Agreement	14/04/2015	✓	✓		✓
Security of Supply Agreement		✓			
Site Services Agreement	14/04/2015	✓			✓
Electricity Connection Agreement	14/04/2015	✓			✓
LNG Security of Supply Agreement	14/04/2015				
Plant Manning Agreement	19/02/2016				

Chapter 5

Laying the Groundwork

5.0.1 Shortly following the award of the contracts to the ElectroGas Consortium on 4 December 2013, Enemalta entered into two agreements that were to serve as the basis for the project. These consisted of the Share Purchase Agreement and the Site Lease Deed. The Share Purchase Agreement, dated 9 May 2014, regulated the transfer of all the shares of the SPC, that is, Malta Power and Gas Ltd, to the shareholders of the ElectroGas Consortium. After the acquisition of the shareholding, Malta Power and Gas Ltd became ElectroGas Malta Ltd. The Site Lease Deed, entered into on 16 December 2014, allowed for the lease of a number of sites at Delimara to be utilised for the purposes of the project.

5.0.2 In addition to these agreements, ElectroGas Ltd entered into the Exclusive Berthing Rights Agreement with Transport Malta on 12 December 2014. This Agreement regulated the rights enjoyed by ElectroGas Ltd for project-related purposes over a specified area of sea.

5.1 Share Purchase Agreement

5.1.1 On 9 May 2014, Enemalta, Gasol plc, GEM Holdings Ltd, Siemens Project Ventures GmbH, Socar Trading SA and Malta Power and Gas Ltd entered into the Share Purchase Agreement. Through this Agreement, Enemalta undertook to transfer all shares held in Malta Power and Gas Ltd to Gasol plc, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, hereinafter respectively referred to as the Transferee and collectively referred to as the Transferees. Specifically, Enemalta was to sell and transfer, subject to the terms and conditions of the Share Purchase Agreement:

- a. 3,000 shares to Gasol plc;
- b. 3,000 shares to GEM Holdings Ltd;
- c. 2,000 shares to Siemens Project Ventures GmbH; and
- d. 2,000 shares to Socar Trading SA.

5.1.2 Each Transferee was afforded the right to designate a wholly owned subsidiary to acquire the shares to be transferred. On the written request of the relevant Transferee, the designated subsidiary was deemed to have been assigned the benefit of the Transferee’s rights and obligations pursuant to the Share Purchase Agreement on a joint and several basis with the Transferee. The Transferee was to be jointly and severally liable to honour the obligations

undertaken by its designated subsidiary emanating from the Agreement, including the payment made for the acquisition of shares.

5.1.3 The parties agreed that the Transferees would acquire the shares under the same terms and conditions as held by Enemalta. Furthermore, all dividends, distributions and other rights arising from the shares were to be entirely vested in the Transferees with effect from the date of transfer. The transfer of the shares was to take place on the Completion Date, that is, one week after the date on which Enemalta completed the changes to the share capital and share classes of Malta Power and Gas Ltd necessary for the execution of the share transfer in accordance with the Share Purchase Agreement, or on such date as agreed by the parties. Enemalta was to duly notify the Transferees of the completion of the necessary changes. In consideration of the transfer of shares, each valued at €1, the Transferees were to pay €10,000 to Enemalta. This consideration was to become payable on the Completion Date.

5.1.4 Enemalta undertook to secure that the Transferees acquired good title to the shares, free from all security interests and together with all rights attaching thereto with effect from the date of transfer, as well as any other third party rights of any other nature and for that purpose was to execute all necessary documents and perform all relevant acts and other formalities. On the Completion Date, Enemalta was to ensure that:

- a. the current directors, legal and judicial representatives, and secretary of Malta Power and Gas Ltd tendered their resignation from their respective offices; and
- b. new directors, legal and judicial representatives and a secretary of Malta Power and Gas Ltd be appointed, as identified by the Transferees to Enemalta on or before the Completion Date and prior to the transfer of shares.

5.1.5 Furthermore, on the Completion Date and on execution of the transfer of shares, Enemalta was to make available to the Transferees, as applicable, the following documentation:

- a. the share certificates;
- b. the notification addressed to the Registry of Companies setting out the transfer of shares from Enemalta to the Transferees;
- c. the certificate of registration of Malta Power and Gas Ltd;
- d. the statutory books, books of account and documents of record of Malta Power and Gas Ltd; and
- e. the forms to amend the mandates given by Malta Power and Gas Ltd to its bankers, if any.

- 5.1.6 Through the Share Purchase Agreement, the Transferees and Malta Power and Gas Ltd acknowledged and accepted that the latter was to reimburse Enemalta the amount of €30,000,000. The amount payable by Malta Power and Gas Ltd to Enemalta was for services rendered, including costs incurred by Enemalta on behalf of Malta Power and Gas Ltd. This amount was to be invoiced by Enemalta to Malta Power and Gas Ltd at a future date and reimbursement was to be effected over twelve consecutive equal monthly instalments from the Drawdown Date, that is, the date on which the lenders providing financing for the project made their first funding to the Company.
- 5.1.7 With regard to taxes, Enemalta was responsible for the payment of any tax on capital gains payable on the transfer of shares. On the other hand, the Transferees were responsible for the payment of any duty on documents and any penalty or interest related thereto arising as a result of the share transfer.
- 5.1.8 Enemalta and the Transferees warranted that they had full power and authority to enter into and perform the obligations that were to be assumed under the Share Purchase Agreement. Furthermore, Enemalta warranted and represented to the Transferees that as at the Completion Date, the share capital of Malta Power and Gas Ltd was 10,000 ordinary shares, each of €1 nominal value and appertaining to one class. Enemalta held valid title immediately prior to the transfer and the transferred shares constituted 100 per cent of the total issued and allotted share capital. In addition, Enemalta warranted that no persons were employed by Malta Power and Gas Ltd, that the Company had not entered into any contract, transaction, arrangement, understanding or obligation, and that it had no liabilities, whether actual or contingent, of whatsoever nature, save as agreed in writing by the parties to the Share Purchase Agreement.
- 5.1.9 Although Enemalta warranted that Malta Power and Gas Ltd had not applied for or obtained any governmental permits and consents, a qualification was made in terms of the full development permit for the construction of a gas fired power plant and an onshore re-gasification unit, as well as the full development permits for the construction of a jetty, which were in fact obtained. Moreover, reference was made to the studies carried out and commissioned in connection with the aforementioned permits, including an Environmental Impact Assessment. Also cited as qualification were efforts undertaken by Malta Power and Gas Ltd intended at securing the IPPC permit.
- 5.1.10 Stipulated in the Share Purchase Agreement was that Enemalta and the Transferees had the right to terminate the Agreement, without incurring any liability, by giving notice to all other parties, if the Drawdown Date had not occurred by 31 August 2014. If the Share Purchase Agreement was terminated in this manner, then the Transferees were to return the shares to Enemalta. In consideration for the shares reacquired in this manner, Enemalta would pay the transferees an amount equivalent to €10,000.
- 5.1.11 Among other provisions of the Share Purchase Agreement were those regulating applicable law and jurisdiction. In this context, the parties agreed that the Share Purchase Agreement,

as well as the rights and obligations arising therefrom, were to be governed by and construed in accordance with the laws of Malta. Noted was that instances of disagreement between the parties with respect to the Agreement were to be settled amicably in good faith, failing which, arbitration in Malta was to be pursued.

5.2 Exclusive Berthing Rights Agreement

- 5.2.1** ElectroGas Ltd and the Authority for Transport in Malta entered into the Exclusive Berthing Rights Agreement on 12 December 2014. Through this Agreement, the Authority granted ElectroGas Ltd the exclusive right to utilise, occupy, enjoy, administer, operate and manage an area of sea specified in the Agreement. ElectroGas Ltd, and its contractors, suppliers and designees, were to use the designated sea area for the navigation, berthing and mooring of vessels, and for any other matter supplementary or linked thereto or to its activities pursuant to or in connection with the IA. The Agreement was to remain in effect until the date of expiry or termination of the IA. Furthermore, the Agreement would automatically renew for additional periods of one year unless one of the parties conveyed its intention not to renew at least one month before the expiry of the effective term. On termination, ElectroGas Ltd was to return the sea area to the Authority without any right for compensation.
- 5.2.2** According to the Exclusive Berthing Rights Agreement, on completion of a marine study, ElectroGas Ltd could notify the Authority and request an expansion to the sea area allocated to allow for normal operation of its facilities, location of the FSU and ship-to-ship LNG transfers. Should such circumstances arise, the Authority and ElectroGas Ltd were to meet and reach agreement on the proposed expansion.
- 5.2.3** In consideration for the use of the sea area granted, ElectroGas Ltd was to effect an annual payment of €1 to the Authority. In addition, ElectroGas Ltd bore no obligation to reimburse any income generated through the activities carried out within the allocated sea area.
- 5.2.4** Furthermore, the Agreement delved into the indemnities that ElectroGas Ltd was to provide. ElectroGas Ltd was to indemnify and hold the Authority free and harmless from any liabilities, and from or against proceedings, arising because of the death or injury of any person or damage to or destruction of any property in the sea area that resulted from ElectroGas Ltd's permitted operations in such sea area.
- 5.2.5** The Exclusive Berthing Rights Agreement also provided for other matters and for circumstances that could arise in the execution of the Agreement. Among others, the Agreement outlined the insurance cover that ElectroGas Ltd was to maintain, the terms and conditions that were to be adhered to in case of a force majeure, and stipulated that ElectroGas Ltd was not to assign or transfer this Agreement in whole or in part, without the prior written consent of the Authority, except in connection with financing for the purposes of the permitted use of the sea area in line with this Agreement.

5.3 Site Lease Deed

- 5.3.1 Enemalta and ElectroGas Ltd entered into the Site Lease Deed on 16 December 2014. By virtue of the Deed, Enemalta leased five sites in Delimara to ElectroGas Ltd for the exclusive purpose of supplying electricity and gas to Enemalta through the facilities that were to be constructed by ElectroGas Ltd for this purpose. The sites comprised:
- a. Site A, measuring approximately 12,000 square metres, on which ElectroGas Ltd was to build, develop, operate or maintain its electricity facilities;
 - b. Site B, measuring approximately 6,700 square metres, on which ElectroGas Ltd was to build, install, develop, operate or maintain re-gasification facilities and ancillary equipment;
 - c. Site C, measuring approximately 430 square metres, on which ElectroGas Ltd was to build, install, develop, operate or maintain equipment for the Delimara 3 connection point;
 - d. Site D, measuring approximately 145 square metres, on which ElectroGas Ltd was to build, install, develop, operate or maintain a switchgear building in respect of sea water pumps and electrical supplies for its gas facilities; and
 - e. Site E, an area of reclaimed land on which ElectroGas Ltd was to build a jetty thereon and which was to form part of the leased premises when the land reclamation process was completed.
- 5.3.2 The Deed was to be effective for 22 years from 16 December 2014, save for a premature termination in line with its provisions. ElectroGas Ltd could request an extension of the term by twelve years, subject to the same terms and conditions, provided that the request to Enemalta was made twelve months prior to the expiry of the term.
- 5.3.3 Further stipulated in the Site Lease Deed was that ElectroGas Ltd could utilise the leased premises to perform any authorised and/or required works in pursuance of supplying and fulfilling its obligations to Enemalta, defined as the permitted works. The Deed also provided for the monitoring of works by Enemalta and measures available to it in relation to any permit breaches, as well as the use of lay down areas and access to other sites and equipment by ElectroGas Ltd. ElectroGas Ltd was not to make any alteration, addition, improvement, or other changes to the leased premises, other than the permitted works, without Enemalta’s prior approval. In this respect, ElectroGas Ltd was to submit to Enemalta a detailed statement of the scope of the proposed alterations.
- 5.3.4 The Deed included a number of provisions with respect to the rent payable by ElectroGas Ltd in respect of the leased sites as from 16 December 2014. ElectroGas Ltd was to pay Enemalta, quarterly in advance, rent of €11.65 per square metre per annum, that is, a comprehensive annual charge of €224,554 for Sites A, B, C and D. However, rent for the period 16 December

2014 to 16 May 2016 was to be reduced by half. Furthermore, rent was to be increased every year on 16 December by the cumulative increase in the HICP. Additionally, rent for Site E became payable subsequent to the conclusion of any land reclamation. According to the Deed, Enemalta was to invoice ElectroGas Ltd quarterly for the subsequent quarter's rent and ElectroGas Ltd was to pay within 30 days of notification. Failure to settle dues within the stipulated timeframe would render ElectroGas Ltd liable to pay interest to Enemalta at an agreed rate, established at three months Euribor plus three per cent.

- 5.3.5 The Deed included a number of clauses relating to other expenses that were to be incurred by ElectroGas Ltd. ElectroGas Ltd was to conform to all applicable legally-binding requirements of governmental authorities at its cost and expense. Besides, ElectroGas Ltd was to pay for the purchase and maintenance of any required licences, and to keep the leased premises in good repair. Furthermore, ElectroGas Ltd was to procure and maintain in effect, at its sole cost and expense, insurance in line with good industry practice and such insurance policies and coverage as required by law. Evidence of payments made for insurance cover was to be supplied to Enemalta. Alterations, additions, improvements or other changes to the leased premises were also to be carried out at ElectroGas Ltd's sole cost and expense.
- 5.3.6 Additionally, the Deed provided for Enemalta to have the right to access the leased premises to ascertain compliance to the conditions of the Deed through an audit, investigation or inspection. Such right was to include access to the electricity generating and gas facilities of ElectroGas Ltd. Any non-compliance identified by Enemalta was to be addressed by ElectroGas Ltd through a plan of action agreed with Enemalta.
- 5.3.7 Specified in the Deed were provisions relating to which party was responsible for breaches of legislation relating to occupational health and safety. In this respect, ElectroGas Ltd was responsible for breaches on the leased premises that were not caused by Enemalta, while Enemalta was responsible for breaches on the Delimara Site, other than the leased premises, not caused by ElectroGas Ltd.
- 5.3.8 Detailed provisions relating to the assignment and transferring of rights and/or obligations were specified in the Site Lease Deed. In this respect, ElectroGas Ltd was not to sublet, assign, or transfer all and/or any of its rights and obligations under this Deed, bar where provided for in the Deed or with Enemalta's prior approval. However, ElectroGas Ltd could assign its rights for the purpose of providing security under the Financing Agreements following notification to Enemalta within five days of any such assignment. Furthermore, Enemalta was entitled to transfer its rights and obligations under this Deed to Government, any entity controlled by Government, or any other person substantially performing any of the functions previously performed by Enemalta, subject to an independent legal opinion confirming that the agreement was the legal, valid, binding and enforceable obligation of the transferee.
- 5.3.9 The Site Lease Deed included provisions relating to possible defaults by ElectroGas Ltd and remedies thereto. Unless the default was attributable to an Enemalta breach of contract or due to a force majeure event, the following were to constitute an ElectroGas Ltd event of default:

- a. an event of insolvency in relation to ElectroGas Ltd;
- b. abandonment;
- c. failure to pay rent within the permitted time period;
- d. material breach by ElectroGas Ltd of any of its material obligations under the Deed that remained uncured for 30 days from notification of such breach by Enemalta; and
- e. the assignment or transfer of the rights or obligations of ElectroGas Ltd in breach of the provisions of the Deed.

5.3.10 The Deed was to be terminated with immediate effect, save as otherwise formally agreed between Enemalta and ElectroGas Ltd:

- a. on 15 days from notification by Enemalta following the occurrence of a default attributable to ElectroGas Ltd;
- b. on expiry of the term;
- c. on the date on which ElectroGas Ltd’s energy facilities were transferred to Enemalta in accordance with the terms agreed between the parties, provided that all amounts due by Enemalta were settled; or
- d. on or before the expiry of the term, subsequent to the decommissioning of the ElectroGas Ltd energy facilities and the clearance of the leased premises.

5.3.11 According to the Site Lease Deed, on termination, unless the energy facilities were transferred to Enemalta, ElectroGas Ltd was required to decommission the facilities on the leased premises. In such circumstances, the term of the Deed was to be extended by 18 months. If ElectroGas Ltd did not carry out the decommissioning, Enemalta would be entitled to dispose of the facilities at ElectroGas Ltd’s expense. Furthermore, on termination of the Deed, ElectroGas Ltd was to vacate and surrender the leased premises to Enemalta, subject to any other obligation in terms of this Deed. If ElectroGas Ltd continued to occupy the premises, or any part thereof, for longer than ten weeks after the termination of the Deed without Enemalta’s written consent, then ElectroGas Ltd would be liable to pay pre-liquidated damages. Under such circumstances, ElectroGas Ltd would be required to pay €45 per square metre per annum for each week or part thereof during which it still occupied the leased premises.

5.3.12 The Site Lease Deed also provided for circumstances that could arise during the term of the Deed. Among others, the Deed provided for the terms and conditions that were to be adhered to in the case of a force majeure event. Also specified was the dispute resolution procedure that was to be followed should any controversy, disagreement or dispute arise between the parties in the performance, interpretation or application of this Deed.

Chapter 5

Chapter 6

Transaction Agreements: Supply Agreements

6.0.1 The Supply Agreements, namely the IA, the PPA and the GSA, outlined the terms that were to regulate the supply of electricity and gas to Enemalta by ElectroGas Ltd. The IA provided the framework of responsibilities and obligations that were to be borne by Enemalta and ElectroGas Ltd in terms of the project. While the PPA regulated the technical and commercial terms and conditions under which electricity was to be sold to Enemalta by ElectroGas Ltd, the GSA allowed for Enemalta to procure gas from ElectroGas Ltd to operate Delimara 3.

6.1 Power Purchase Agreement

6.1.1 The PPA was entered into by ElectroGas Ltd and Enemalta on 14 April 2015, whereby ElectroGas Ltd agreed to make available electrical energy to Enemalta and to supply up to 205 MW of electrical energy every hour, when dispatched by Enemalta, from the Delimara 4 CCGT power plant that was to be constructed. In turn, Enemalta agreed to pay for the availability of electrical energy at Delimara 4 and the electrical output delivered by ElectroGas Ltd to Enemalta's network. Different tariff structures were established to regulate Enemalta's payments to ElectroGas Ltd for available and dispatched energy, which took into account multiple factors, over the 18-year term of the PPA.

6.1.2 For the PPA to come into effect, two conditions were to be met. First, ElectroGas Ltd was to enter into an LNG SPA with Socar Trading SA and second, that Enemalta provide ElectroGas Ltd with a copy of the network code as at 20 December 2014. At the point when the PPA was signed, both these conditions had been satisfied and therefore, the date of effect was understood as 14 April 2015, the date of the Agreement. The PPA was to be terminated if any of the Project Agreements was terminated for reasons cited in the IA (paragraph 6.3.105 refers), or on expiration of the term.

The Delimara 4 Plant

6.1.3 In order to meet its obligations in terms of supply and availability of energy to Enemalta, ElectroGas Ltd was to design, engineer, construct, finance, own, operate and maintain Delimara 4, which was to conform to the minimum functional specifications established in the IA with respect to characteristics, capacity and performance. The project entailed a combined cycle configuration comprising three Siemens SGT-800 gas turbine generators with ancillary equipment, three heat recovery steam generators with main and bypass stacks, one Siemens SST-900 steam turbine generator unit with auxiliary systems, and electrical equipment and

control systems for use in control and exporting power. Unless otherwise agreed with Enemalta, ElectroGas Ltd was to operate Delimara 4 using gas.

6.1.4 The plant was to be located on the premises leased by Enemalta to ElectroGas Ltd through the Site Lease Deed dated 16 December 2014. Moreover, Delimara 4 was to be connected to Enemalta’s distribution network as per the Electricity Connection Agreement entered into between the parties on 14 April 2015. In accordance with the PPA, the scheduled energy delivery date was determined as 24 months from the Schedule Start Date of the project, which the IA defined as 14 April 2015. The completion deadline for Delimara 4 project was therefore pre-determined as April 2017.

Open Cycle Energy Delivery Date and Energy Delivery Date

6.1.5 According to the IA, two key milestones were established with respect to the PPA, namely the Scheduled Open Cycle Energy Delivery Date and the Scheduled Energy Delivery Date. Open cycle refers to a mode of operation where the flue gases from a gas turbine generator are fed directly to the atmosphere. According to the PPA, the tendered open cycle energy availability, at reference conditions in terms of ambient temperature, air pressure, humidity and sea water cooling water temperature, among others, was to be 134 MW. Open cycle functional tests and open cycle performance acceptance tests were to be undertaken to ensure compliance to parameters stipulated in the PPA. It was in this context that the Scheduled Open Cycle Energy Delivery Date was to imply that the requirements in terms of open cycle operation of Delimara 4 were met. This date was set as 18 months after the Schedule Start Date; therefore, 14 October 2016.

6.1.6 According to the operating parameters established in the PPA, the tendered energy capacity of the new Delimara 4 plant was to be 205 MW when operating at reference conditions on combined cycle. This level of output was to be achieved by 24 months after the Schedule Start Date, that is, 14 April 2017. In a combined cycle power plant, the output heat of the gas turbine flue gas is utilised to generate steam by passing it through a heat recovery system generator so it can be used as input heat to the steam turbine, thereby generating additional electricity. A series of tests were to be undertaken in order to determine whether the plant conformed with operating parameters and the facilities ready for commercial operation. The successful operation of the Delimara 4 plant on combined cycle in line with the specified Minimum Acceptance Delimara 4 Energy Availability, duly certified by an independent engineer, was to be achieved by the Scheduled Energy Delivery Date of 15 April 2017.

6.1.7 The NAO noted that other references cited a nominal output of 215 MW, comprised of 50 MW for each of the three gas turbines and 65 MW for a single steam turbine. Following queries raised, Enemalta confirmed that the tendered availability was 205 MW, a fixed value which ElectroGas Ltd was to comply with. Notwithstanding this, the plant is able to produce 215 MW in aggregate. However, the ability of ElectroGas Ltd to produce an output above the tendered availability posed no obligation on Enemalta. This difference represented additional capacity that allowed the plant to achieve the tendered availability comfortably.



Testing

- 6.1.8 Stipulated in the PPA were provisions regulating various aspects of testing that was to be undertaken at key stages of the project. Outlined were the obligations that each party was to fulfil, with ElectroGas Ltd required to give advance written notice of not less than 90 days for testing to be carried out with respect to the open cycle and combined cycle acceptance tests. Enemalta was to cooperate through the provision of load for all tests and was to dispatch Delimara 4 up to its maximum output for the purposes of testing. Results obtained, corrected for ambient conditions, were to be verified and endorsed by an independent engineer.
- 6.1.9 Acceptance testing was to be undertaken in the following sequence:
- a. open cycle functional tests;
 - b. open cycle performance acceptance tests;
 - c. combined cycle functional tests;
 - d. combined cycle performance acceptance tests; and
 - e. combined cycle reliability tests.
- 6.1.10 Open cycle functional testing was to be carried out after the construction and installation of components and systems. This testing was to cover anything that was ancillary and essential to achieving the open cycle acceptance date, that is, the point at which each gas turbine generator was able to meet the specific required functionality. Subsequently, open cycle performance acceptance tests were to be conducted to verify the performance of each gas turbine generator against the operating parameters set out in the PPA. During such testing, each gas turbine generator was to be operated and tested, together with all auxiliary plant, equipment and services, required for its safe and efficient operation at full capacity for a continuous period of two hours.
- 6.1.11 Following the conclusion of open cycle testing, combined cycle testing was to be undertaken. Combined cycle functional tests were to be carried out to establish whether the facilities were able to meet the specific required functionality. Functional testing of the combined cycle facilities was to include all plant that was ancillary and essential to the operation of the facilities but was not to include the plant that had undergone the open cycle functional tests. Among other matters, the combined cycle functional tests were to assess part and full load capability, that is, the stable and continuous operation at active power levels of 70 per cent gas turbine generator load and 100 per cent of the full capacity of the combined cycle facilities, for a continuous period of two hours. Combined cycle performance acceptance testing was to follow the functional testing and was to establish whether the facilities were able to meet the specific required performance characteristics.

- 6.1.12 The final phase of testing, that is, the combined cycle reliability tests entailed a series of tests intended to determine whether the plant was able to meet the required reliability criteria. During the combined cycle reliability test, the facilities were to be operated and tested for a continuous 72-hour period, followed by a nine-day load run under a variety of dispatch instructions. The combined cycle reliability test was to be repeated in case of forced outages resulting during testing.
- 6.1.13 If the conclusion of testing resulted in a positive outcome, that is, if the open cycle acceptance tests energy availability was equal to or greater than the tendered open cycle energy availability for each gas turbine generator, then the Open Cycle Acceptance Date of each generator was to be determined as two days after Enemalta received certification from the independent engineer. According to the PPA, the date on which at least one gas turbine generator achieved its Open Cycle Acceptance Date corresponded to the Open Cycle Energy Delivery Date. Inability to meet such date could result from construction and commissioning delays. In the case of the combined cycle, the Energy Delivery Date was to be accordingly determined by Enemalta following receipt of the combined cycle testing results.
- 6.1.14 The NAO sought to establish when the Open Cycle Acceptance Date, the Open Cycle Energy Delivery Date and the Energy Delivery Date were achieved. Certification relating to the Open Cycle Acceptance Date was received by Enemalta, with the independent engineer confirming that the Delimara 4 Open Cycle Acceptance Tests had been duly completed, on 4 April 2017. Completed initial performance test reports drawn up by the independent engineer, dated 28 March 2017, stated that the Open Cycle Acceptance Tests Energy Availability for each of the three gas turbines was in excess of their Tendered Open Cycle Energy Availability. This implied that the Open Cycle Energy Delivery Date was achieved. In this context, ElectroGas Ltd submitted correspondence to Enemalta, dated 5 April 2017, confirming that the open cycle acceptance test for the gas turbines had been duly completed and that the Open Cycle Acceptance Tests Energy Availability exceeded the Tendered Open Cycle Energy Availability. According to this correspondence, the Open Cycle Energy Delivery Date had occurred on 5 April 2017.
- 6.1.15 In respect of the Energy Delivery Date, ElectroGas Ltd submitted correspondence to Enemalta on 9 August 2017, stating that the Combined Cycle Acceptance Tests for the Delimara 4 plant had been duly completed and that the Combined Cycle Acceptance Tests Energy Availability was in excess of the Tendered Energy Availability. Furthermore, ElectroGas Ltd declared that all the requirements concerning the readiness for testing stipulated in the PPA had been satisfied in relation to Delimara 4 operating in combined cycle; however, this declaration was without prejudice to the Deferral of Functional Tests, as agreed between ElectroGas Ltd and Enemalta on 8 August 2017. Moreover, ElectroGas Ltd confirmed that the Energy Delivery Date was to be reckoned as having occurred on 10 August 2017. The final report by the independent engineer, confirming that the tendered energy capacity of the Delimara 4 plant was met, was dated 20 September 2017. Outlined in the independent engineer's final report was that the Combined

Cycle Acceptance Tests Energy Availability of the plant, undertaken between 12 and 17 July 2017, exceeded the Tendered Combined Cycle Energy Availability. According to Enemalta, the inability of ElectroGas Ltd to meet the Scheduled Open Cycle Energy Delivery Date and the Scheduled Energy Delivery Date was due to construction and commissioning delays.

- 6.1.16 The Deferral of Functional Tests Agreement was entered into by Enemalta and ElectroGas Ltd on 8 August 2017, and its terms amended the IA and the PPA. It was noted that Enemalta had requested ElectroGas Ltd to carry out functional testing of the combined cycle facilities, including a blackout test, a voltage control test and a frequency control test, and scheduled these for August 2017. The Agreement stated that ElectroGas Ltd was still entitled to achieve the Energy Delivery Date if all other tests required by the Transaction Agreements were duly completed and successful, notwithstanding the stage of completion of any of the above-cited tests. It was further noted that there was no event or circumstance where the scheduled dates could be postponed. If any of these tests were not duly completed or not completed successfully, such testing was to be rescheduled as soon as practicable thereafter and as agreed with Enemalta in order to avoid any adverse impact on the network or on the security of supply. Also noted in the Deferral of Functional Tests Agreement was that Enemalta was entitled to terminate the Project Agreements or serve a default notice on ElectroGas Ltd if the tests were not duly or successfully completed after 75 days from the scheduled dates, unless such failure was remedied by the termination date, resulted from a breach by Enemalta, or was due to a force majeure event. It was noted that successful completion of a test meant that Enemalta had received an updated Combined Cycle Acceptance Tests Report from the independent engineer, certifying that the relevant tests had been carried out satisfactorily and rendering evident conformity of Delimara 4 with the Minimum Functional Specifications and the Transaction Agreements.

Delayed Energy Delivery Date and Deemed Availability

- 6.1.17 Without prejudice to any right of Enemalta pursuant to the termination clauses specified in the IA, the PPA specified the action that was to be taken in the event that the Scheduled Open Cycle Energy Delivery Date and/or the Scheduled Energy Delivery Date were not met. According to the PPA, ElectroGas Ltd acknowledged that Enemalta would suffer actual damages if, due to reasons attributable to ElectroGas Ltd, the latter failed to attain the open cycle acceptance date of a gas turbine generator by the Scheduled Open Cycle Energy Delivery Date or the tendered Delimara 4 energy availability by the Scheduled Energy Delivery Date.
- 6.1.18 Delays in any of the scheduled delivery dates, and the consequent delay liquidated damages that were due to Enemalta by ElectroGas Ltd in the event of such setbacks, were contemplated in the PPA. Delay in the Scheduled Open Cycle Energy Delivery Date was defined in the PPA as the failure of one or more gas turbine generators realising the Open Cycle Acceptance Date by the Scheduled Open Cycle Energy Delivery Date. In such a circumstance, ElectroGas Ltd was to

compensate Enemalta for every day of delay, or part thereof, from the Scheduled Open Cycle Energy Delivery Date until the earlier of:

- a. the attainment of the Open Cycle Energy Delivery Date with respect of all generators;
- b. the termination of the Project Agreements; or
- c. the date falling 180 days after the Scheduled Open Cycle Energy Delivery Date, defined in the PPA as the Last Open Cycle Energy Delivery Date.

Delay liquidated damages payable by ElectroGas Ltd were established at €20,000 daily with regard to each gas turbine generator that had not attained its Open Cycle Acceptance Date.

6.1.19 Similarly, the PPA established the delay liquidated damages payable by ElectroGas in the event of its failure to attain the tendered energy capacity of Delimara 4 by the Scheduled Energy Delivery Date. In the event of such a delay, ElectroGas Ltd was to pay Enemalta compensation to the amount of €80,000 for each day of delay, or part thereof, from the Scheduled Energy Delivery Date until the earlier of the energy delivery date, the termination of the Project Agreements, or the date falling 180 days after the Scheduled Energy Delivery Date, defined in the PPA as the Last Energy Delivery Date.

6.1.20 Notwithstanding the above provisions, the PPA stipulated a limit on delay liquidated damages payable by ElectroGas Ltd in case it defaulted on the Energy Delivery Date. In terms of the PPA, ElectroGas Ltd was liable to pay delay liquidated damages pursuant to the Supply Agreements up to a maximum limit of €18,000,000. The PPA stipulated that, without prejudice to any right of Enemalta to issue a termination notice and other measures provided for in the IA in respect of non-conforming supply, among others, Enemalta's right to claim delay liquidated damages was to be the exclusive remedy for ElectroGas' failure to achieve the Open Cycle Acceptance Date for a gas turbine generator by the Scheduled Open Cycle Energy Delivery Date or its failure to achieve the Energy Delivery Date by the Scheduled Energy Delivery Date. If ElectroGas Ltd failed to achieve the Open Cycle Energy Delivery Date or the Energy Delivery Date by the permissible extended deadlines stipulated in the IA, and subsequently failed to settle the arising delay liquidated damages, then Enemalta was entitled to exercise its rights pursuant to the IA to call on the performance guarantee and recover such amounts due.

6.1.21 The NAO ascertained that the Open Cycle Energy Delivery Date and the Energy Delivery Date were achieved by ElectroGas Ltd prior to the Last Open Cycle Energy Delivery Date and the Last Energy Delivery Date, respectively. However, in view of the failure by ElectroGas Ltd to achieve the set milestones by their scheduled dates, queries were raised by the NAO with respect to charges imposed by Enemalta on ElectroGas Ltd for delays. According to Enemalta delay charges levied with respect to the Scheduled Open Cycle Energy Delivery Date and the Scheduled Energy Delivery Date amounted to €10,440,000 and €9,680,000, respectively. In aggregate, the charges amounted to €20,120,000. Additional penalties of €2,295,000 were also due in 2016

and 2017 for delays in achieving the Gas Availability Date pursuant to the GSA. Although the total delay liquidated damages amounted to €22,415,000, these were effectively capped at a comprehensive €18,000,000 by the PPA and GSA. The Office was unable to ascertain whether the delay liquidated damages were paid by ElectroGas Ltd as queries submitted to Enemalta in this regard remained unaddressed.

6.1.22 The PPA also included provisions relating to failure to realise the project within the determined timeframes due to reasons outside the control of either Enemalta or ElectroGas Ltd. In the event that the implementation of Delimara 4 was prevented, hindered or delayed due to such circumstances, ElectroGas Ltd was to give notice to Enemalta as soon as practicable after the delay, default or circumstances had occurred, indicating the particulars thereof and its net effect on the achievement of scheduled targets. ElectroGas Ltd was obligated to make all reasonable efforts to minimise delays, acting as a reasonable and prudent operator.

6.1.23 If due to such a delay, default or circumstance ElectroGas Ltd was unable to achieve the tendered open cycle energy availability in respect of a gas turbine or turbines, or the tendered Delimara 4 energy availability, then the deemed open cycle energy delivery date and the energy delivery date were to be considered to have occurred on the dates originally planned. Enemalta was to pay the energy availability payments that would have been due to ElectroGas Ltd had such delay, default or circumstances not occurred.

Operating Obligations of ElectroGas Ltd

6.1.24 The PPA stipulated that the term of this Agreement was to come into effect on the 'Effective Date', understood as 14 April 2015 (paragraph 6.1.2 refers), and thereafter was to remain in effect throughout the 'Term', unless terminated in accordance with the provisions of the IA. According to the IA, the term was to continue in full force and was to be in effect for a period that ends on the date 18 years after the Open Cycle Energy Delivery Date, scheduled for October 2016 (paragraph 6.3.5 refers). Therefore, unless the term of the Transaction Agreements is extended, as may be agreed between the parties in accordance with the IA, ElectroGas Ltd is to supply electrical energy to Enemalta through Delimara 4 until, at least, October 2034.

6.1.25 During the 18-year term of the PPA, ElectroGas Ltd was bound to, among other matters, make available electrical energy, supply the requisite electrical energy, and ancillary services to Enemalta through Delimara 4. To this end, ElectroGas Ltd was to:

- a. operate and maintain Delimara 4 in accordance with its obligations pursuant to the network code provided by Enemalta, pertinent approvals, applicable laws, relevant manufacturer's guidelines and instructions, the minimum functional specifications and all other terms of the Transaction Agreements;
- b. generate energy in accordance with dispatch instructions from Enemalta;

- c. ensure that sufficiently competent and qualified personnel are deployed to Delimara 4 at all times;
- d. not make any alterations to Delimara 4 which would affect the operating parameters without Enemalta’s prior written consent;
- e. use all reasonable endeavours to ensure that Delimara 4 is operated and maintained during the term of the PPA; and
- f. manage its obligations to supply electricity in accordance with this Agreement.

6.1.26 The minimum functional specifications ensured that Delimara 4 was designed and constructed to be sufficiently reliable to ensure that security of supply was maintained. The scope of works included civil works, mechanical plant, electrical and instrumentation and control systems. Aside from the general requirements outlined, the minimum functional specifications detailed the method of interface with the Enemalta control centre, the mechanical functional specifications, the electrical functional specifications, plant safety and risk mitigation measures, as well as quality assurance and testing.

6.1.27 The PPA distinguished between the electrical energy that was to be made available by ElectroGas Ltd and the electrical energy that was to be supplied by ElectroGas Ltd when Enemalta issued dispatch instructions. In turn, Enemalta was to pay for the availability of electrical output that was to be generated by Delimara 4, referred to as the Energy Availability Payment, and the electrical output delivered by ElectroGas Ltd to Enemalta’s network, referred to as the Energy Delivery Payment. These payments were to be calculated based on formulas stipulated in the PPA.

Energy Tariffs

6.1.28 Tariffs were payable by Enemalta to ElectroGas Ltd as consideration for the energy made available, the energy supplied and the provision of ancillary services and starts, that is, the Energy Availability Payment, the Energy Delivery Payment and Additional Charges, respectively. No Energy Availability Payment was due in respect of the testing and commissioning of the gas turbine generators prior to their respective open cycle acceptance dates, or in respect of the steam turbine generator prior to the energy delivery date. In these cases, Enemalta was to pay a Commissioning Energy Delivery Payment for the net electrical output during such commissioning and testing. Other than these provisions, payments were to be made for each billing period, defined in the IA as ‘each period of one calendar month’, with tariffs based on a number of variables.

6.1.29 The Energy Availability Payment for a given month was to be calculated through reference to a per unit rate, the amount of energy made available, a weighting taking into account the hour when such energy was available and an adjustment factor. The unit rate was contingent on

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whether the given month fell within the base price period, defined in the IA as the period of five years commencing on the Open Cycle Energy Delivery Date unless extended in extenuating circumstances as specified in the IA, or outside of the base price period. Unit rates differed according to the period of charge and were essentially derived from a base capacity charge for power and a base capacity charge for gas. The base capacity charge for power applicable for the first five years of the contract was set at €14.70 per MWh. This base charge was revised to €21.42 per MWh outside of the base price period, that is, as from the sixth year of the contract. For the calculation of the Energy Availability Payment, the base capacity charge for gas was set at €13.50 per MWh for the entire term of the contract, while the base capacity charges for power and gas outside of the base price period were to be revised according to the HICP (Figure 25 refers).

Figure 25: Base price calculation

	Base Capacity Charge Power	Base Capacity Charge Gas	HICP Revision
During base price period	€14.70/MWh	€13.50/MWh	Not applicable
Outside base price period	€21.42/MWh	€13.50/MWh	Applicable

6.1.30 Other elements that were to be considered in the calculation of the Energy Availability Payment in respect of the sum of the hours in the billing period were:

- a. the Demonstrated MW Available, defined as the total energy available of Delimara 4 which was available or deemed available at the network connection point on a continuous and reliable basis in respect of each hour;
- b. hourly availability weights that took into consideration peak, standard and off-peak time of use, as well as low demand (October to April) and high demand (May to September) months; and
- c. an adjustment factor applicable to reflect a contract stock shortfall (Appendix F refers).

6.1.31 Enemalta was to submit a table for each PPA contract year, specifying how hours (totalling 8,760 or 8,784 in the case of a leap year) were to be classified according to season and time of use. Furthermore, Enemalta was to determine the hourly availability weights that were to be applied; however, certain parameters were to be respected. For example, the ratio between the highest and lowest hourly availability weight values was not to exceed six. In addition, the weighted average of the hourly availability weights of the high demand season was to be no more than 104 per cent and no less than 96 per cent of the weighted average of the hourly availability weights for the low demand season.

6.1.32 The PPA also stipulated how the Energy Delivery Payment was to be calculated. The Energy Delivery Payment for a given month was to be based on the net electrical output less the imported electricity (that is, electricity drawn from the network by ElectroGas Ltd) aggregated

for the hours in the billing period. In order to determine the Energy Delivery Payment, a rate was to be applied to the energy delivered (net electrical output less imported electricity). The rate was based on three factors, namely the:

- a. effective gas price, as determined in the GSA. The gas price was to be calculated based on two variables, that is, the effective commodity price and the variable operating cost for gas. The effective commodity price for gas was to be determined through reference to the value and quantity of opening stock and delivered stock during the billing period. The base variable operating cost for gas was set at €0.07/mmBTU during the base price period and was subject to HICP revisions;
- b. guaranteed Delimara 4 heat rate per hour adjusted for actual ambient conditions; and
- c. total variable operating costs for power and gas, established as €4.10/MWh during the base price period and adjusted by HICP outside the base price period.

6.1.33 Additional Charges were to be levied by ElectroGas Ltd for Starts and Reactive Power. According to the PPA, a Start meant any attempted start of Delimara 4, in response to a dispatch instruction by Enemalta, after it had been shut down. Charges for Starts were to be calculated according to the gas utilised, calculated in mmBTU, multiplied by the gas price, per dispatched successful start. To this, a base start charge of €9,495 was to be added. In terms of the PPA, successful Starts were Starts where Delimara 4 achieves at least the lower output level, corrected to actual ambient conditions, of the minimum efficient levels set out in the PPA and the required output requested in the dispatch instruction by Enemalta.

6.1.34 Reactive Power is the product of voltage and current and the sine of the phase angle between them. The formula for the calculation of payment due by Enemalta for Reactive Power supplied beyond the minimum functional specifications, was specified in the PPA. Moreover, revisions in the formulas for the calculation of the Energy Availability Payment, the Energy Delivery Payment and Additional Charges were to be made in the event of a force majeure extended term. All prices cited in the PPA excluded VAT and any taxes on sales, which taxes were to be charged in addition to the established tariffs.

6.1.35 Figure 26 demonstrates the energy made available and delivered to Enemalta on a monthly basis from February 2017 to June 2018 according to invoices raised by ElectroGas Ltd in this respect. Between February 2017 and June 2018, energy made available and energy delivered by ElectroGas Ltd to Enemalta amounted to 1,384,605MWh and 1,420,829MWh, respectively. In the corresponding period, Energy Availability Payments and Energy Delivery Payments amounted to €53,634,937 and €112,348,660, respectively. The anomalous situation whereby total units of energy delivered exceeded total units of energy made available may be partly attributed to information not provided for the months of April 2017 to June 2017 with respect to energy availability. However, the NAO considered the period July 2017 to October 2017 somewhat anomalous, for during these months, energy made available by ElectroGas Ltd was less than that delivered to Enemalta. Queries in this regard remained unaddressed at the time of reporting.

Figure 26: Energy Availability and Energy Delivery invoiced by ElectroGas Ltd, February 2017 - June 2018

Month	Energy Availability		Energy Delivery		Total
	Units	Invoiced Amount	Units	Invoiced Amount	Invoiced Amount
	(MWh)	(€)	(MWh)	(€)	(€)
February 2017	0	0	2,431	192,733	192,733
March 2017	0	0	6,902	703,106	703,106
April 2017	n/a	2,142,515	41,255	3,884,421	6,026,936
May 2017	n/a	2,042,890	43,647	4,333,667	6,376,557
June 2017	n/a	3,168,886	101,697	8,324,639	11,493,525
July 2017	92,770	3,128,956	114,725	9,208,858	12,337,814
August 2017	127,573	4,244,080	141,196	10,857,689	15,101,769
September 2017	147,600	4,911,538	148,121	11,249,216	16,160,754
October 2017	113,782	3,832,075	115,267	8,814,093	12,646,168
November 2017	96,068	3,205,120	64,497	4,999,043	8,204,163
December 2017	148,805	4,978,757	114,790	8,864,999	13,843,756
January 2018	151,178	5,030,146	80,683	6,293,190	11,323,336
February 2018	114,056	3,795,952	103,347	7,998,628	11,794,580
March 2018	92,332	3,093,794	74,617	5,786,184	8,879,977
April 2018	60,081	2,021,006	53,540	4,204,691	6,225,697
May 2018	115,619	3,876,442	105,260	8,120,560	11,997,002
June 2018	124,741	4,162,780	108,854	8,512,943	12,675,724
Total	1,384,605	53,634,937	1,420,829	112,348,660	165,983,597

Notes:

1. Various credit notes were issued by ElectroGas Ltd with respect to the period April to July 2017, and November 2017. These related to Energy Availability payments and Energy Delivery payments and amounted to €1,291,616 and €577,072, respectively. The NAO was not provided with information relating to the quantities corresponding to such credit notes and therefore these were not included in Figure 26.
2. Energy Availability unit quantities for the period April 2017 to June 2017 were not made available.

6.1.36 As at end May 2018, no invoices in respect of starts and reactive power had been received by Enemalta.

Metering Output

6.1.37 According to the PPA, Enemalta was responsible to procure, install, test, commission, own, operate and maintain electricity meters that were to record the net electrical output of Delimara 4. ElectroGas Ltd was also to install and maintain other metering equipment, referred to as operational metering, to record exported power. If Enemalta's main and back-up electricity meters were not in service, then the operational metering was to be referred to for determining the net electrical output. Enemalta was responsible for the calibration of the electricity meters to ensure that their accuracy was within the 0.5 per cent limit stipulated in the PPA. Testing of the electricity meters was to be undertaken by Enemalta at the request of ElectroGas Ltd.

6.1.38 Real-time electronic transfers of readings were to be provided by Enemalta to ElectroGas Ltd, a record of which was to be retained by Enemalta for at least five years. While Enemalta retained responsibility for the management of meter data, ElectroGas Ltd was to be granted access to this data. The electricity meters were to meter and record the net electrical output of Delimara 4 for each hour of the billing period. Furthermore, the PPA regulated what action was to be taken by the parties in the event of malfunction of the electricity meters or tampering.

Performance-related Damages

6.1.39 The payment of performance liquidated damages was stipulated in the PPA should the average energy availability of each gas turbine fall below the acceptable level established in the Agreement. In this respect, the PPA specified the average energy availability for each gas turbine generator during the Open Cycle Energy Delivery Period. In case of default, ElectroGas Ltd was to pay open cycle liquidated damages of €92 for each percentage point shortfall in the gas turbine generator average availability for every day during the Open Cycle Energy Delivery Period, up to a maximum of €1,830 per day.

6.1.40 The PPA also established the Delimara 4 average availability after the Energy Delivery Date that the plant, now operating on combined cycle, was to achieve. In the event of default, ElectroGas Ltd was to pay performance liquidated damages of €375 for each percentage point shortfall in the Delimara 4 average availability for every day during an Assessment Period (defined in the PPA as a rolling period of two consecutive years from the Energy Delivery Date) up to a maximum of €7,500 per day.

6.1.41 Notwithstanding the above provisions, the PPA established that ElectroGas Ltd’s liability to pay performance liquidated damages in accordance with the Supply Agreements was to be limited to €1,000,000 for each year, other than for the period prior to the Energy Delivery Date, in respect of which performance liquidated damages were to be limited to €500,000. ElectroGas Ltd acknowledged that the above dues payable were in the nature of liquidated damages, were not a penalty, were fair and reasonable, and represented a reasonable estimate of the loss to Enemalta that would result from a failure to maintain the Delimara 4 average energy availability.

6.1.42 In submissions made to this Office, Enemalta noted that the availability of the open cycle gas turbines was measured in aggregate over the open cycle period. Enemalta affirmed that there had been no instances when the average availability of any of the gas turbines fell below the acceptable level established in the PPA with respect to the Open Cycle Energy Delivery Period. Similarly, Enemalta noted that as at end November 2017, there had been no instances when the Delimara 4 average availability fell below the acceptable level established in the PPA subsequent to the Energy Delivery Date; however, this was subject to measurement over a two-year period, which period had not yet expired.

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Reports, Records, Plans and Monitoring

6.1.43 The PPA stipulated that, during the construction of the project, ElectroGas Ltd was to submit to Enemalta a monthly report detailing the construction activities undertaken in the preceding month, as well as the overall progress in the construction of Delimara 4 with reference to the construction programme. ElectroGas Ltd was to notify Enemalta of any event that caused material damage to the property, serious injury or death to any person, or which had or could materially affect the construction programme, delay the achievement of the Open Cycle Energy Delivery Date and/or the Energy Delivery Date, or jeopardise or otherwise prevent the safe operation of Delimara 4.

6.1.44 Post the construction phase, ElectroGas Ltd was to maintain comprehensive and precise records and all data necessary to facilitate the proper administration of the PPA as well as the Project. Such records and data were to include the maintenance of an accurate and up-to-date operating log, in a format reasonably acceptable to Enemalta. Daily records that were to be maintained in respect of Delimara 4 for each hour included:

- a. the initial declared MW available;
- b. each amended declared MW available;
- c. each dispatch instruction by Enemalta;
- d. the demonstrated energy availability;
- e. the base demonstrated MW available;
- f. net electrical output;
- g. the metered energy availability;
- h. the number of Starts; and
- i. ancillary services provided to Enemalta.

6.1.45 In addition, ElectroGas Ltd was to prepare the following reports with regard to Delimara 4 in respect of each day:

- a. all significant excursions from nominal bus voltage beyond the limits specified in the Network Code;
- b. the number of Starts requested by Enemalta;

- c. the number and causes of all trips, that is any automatic or manual intervention which causes a breaker or a high voltage breaker connecting the synchronised Delimara 4 or any part thereof to the network to open;
- d. the volume of actual contract stock as at the end of each day;
- e. the actual ambient conditions for each hour;
- f. any changes in operating status, periods of outages and causes for such outages for each hour;
- g. contract outage plans, records of contract outages and records of caused equivalent operating hours and actual equivalent operating hours;
- h. total imported electricity for each hour; and
- i. any unusual conditions found during maintenance inspections.

6.1.46 All records and data were to be maintained for a minimum of 36 months and for any additional length of time as could be required. Enemalta maintained the right to examine and obtain copies of any records and data maintained by ElectroGas Ltd directly relating to its performance of obligations pursuant to the PPA.

6.1.47 In addition to maintaining the above hourly and daily records and data, ElectroGas Ltd was to prepare and submit to Enemalta, by not later than three business days following the day to which it related, a statement demonstrating:

- a. the initial declared MW available and every amended declared MW available for each hour in the day;
- b. each dispatch instruction received during the day from Enemalta;
- c. the hourly average MW dispatch instruction for each hour;
- d. the demonstrated energy availability, the base demonstrated MW available, the net electrical output and the metered energy availability for each hour;
- e. the reactive power delivered to the network connection point;
- f. the number of Starts demanded by Enemalta;
- g. the number of caused equivalent operating hours and actual equivalent operating hours accrued since the previous contract outage as at the end of the day;

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- h. the number of trips caused by ElectroGas Ltd and those caused by Enemalta in the day;
- i. the status of Delimara 4 for each hour of the day; and
- j. the amount of actual contract stock at the beginning and end of the day.

Dispute Resolution Procedures

- 6.1.48 The PPA provided dispute resolution procedures that were to be adhered to in case of controversy, disagreement or dispute between the parties in the performance, interpretation or application of the Agreement. If Enemalta disputed any element of the daily statements, it was to notify ElectroGas Ltd of any such dispute and the basis thereof. If the parties were unable to resolve the matter and agree on a daily statement for the day in question within one month (or any other agreed period) from notification, either party could refer the matter to an expert in the area under dispute, appointed pursuant to the PPA, for determination. According to the PPA, where the Agreement provided for expert determination in relation to any matter, neither party was entitled to refer the dispute to arbitration. An expert's decision was final and binding on the parties. Nonetheless, the PPA provided that either party could refer the subject matter of the expert's decision to arbitration. In this case, notice was to be given to the other party within thirty days of the expert's decision. If referred to arbitration, the decision of the expert was to be considered final and binding pending any arbitral award to the contrary.
- 6.1.49 Additionally, the PPA included provisions relating to arbitration. It was noted that any arbitration between the parties was to be held and settled in Malta, and was to be conducted in accordance with the rules of the International Chamber of Commerce in force when the arbitration began.
- 6.1.50 An arbitral tribunal was to be composed of three arbitrators. Each of the parties was to nominate an arbitrator and the two nominated arbitrators were to jointly propose the third, who was to be Chair. The award of the arbitral tribunal was to be final and binding on the parties.

6.2 Gas Supply Agreement

- 6.2.1 The GSA was entered into between ElectroGas Ltd and Enemalta on 14 April 2015. Through this Agreement, ElectroGas Ltd agreed to make available and supply natural gas to Enemalta for the purposes of operating Delimara 3. ElectroGas Ltd was to construct gas facilities intended for the storage and re-gasification of natural gas, essential in meeting the requirements emanating from the GSA. In turn, Enemalta agreed to pay for the availability of gas and the gas delivered pursuant to the terms and conditions of this Agreement. Different tariff structures, accounting for multiple factors, were established to regulate Enemalta's payments to ElectroGas Ltd over the 18-year term of the GSA.
- 6.2.2 As in the case of the PPA, the GSA was to come into force on condition that (a) ElectroGas Ltd entered into an LNG SPA with Socar Trading SA and (b) that Enemalta provided ElectroGas

Ltd with a copy of the network code as at 20 December 2014. At the point when the GSA was signed, both these conditions had been satisfied and therefore, the date of effect was understood as 14 April 2015, the date of this Agreement. The term of the GSA was of 18 years; however, Enemalta could terminate the Agreement earlier subject to notification at specific junctures during the term of the GSA, referred to as reference GSA exit dates, as stipulated in the IA. In the event of an early termination of the GSA, Enemalta was to acquire the gas facilities for a consideration in accordance with the IA. Moreover, the GSA was to be terminated if any of the Project Agreements was terminated for reasons cited in the IA (paragraphs 6.3.106 and 6.3.107 refer), or on expiration of the term.

Gas Facilities

- 6.2.3 In terms of the GSA, ElectroGas Ltd was to design, engineer, construct, finance, own, operate and maintain the gas facility. ElectroGas Ltd was to put forward for approval by Enemalta a project execution plan for the facility, covering as a minimum the project management, engineering, procurement, construction, testing, commissioning and operation of the gas facility. The gas facility was to include the FSU required to receive and store LNG, together with associated marine infrastructure, including mooring facilities for floating storage, wharves and jetties. The gas facility was also to include the infrastructure required to re-gasify, compress or decompress as appropriate, condition, regulate, deliver and meter gas to the Delimara 3 connection point in line with the GSA, and to the Delimara 4 connection point and all related plant in line with the PPA. The gas facility was to form part of the procured combined facilities that were to concurrently supply the gas required in line with the conditions of the GSA, as well as gas required to generate energy in accordance with the terms of the PPA.
- 6.2.4 The gas facility was to conform to the minimum functional specifications, established in the IA, relating to general and technical requirements, the design basis and emissions control. The stipulated minimum functional specifications were meant to ensure that the gas facilities were designed and constructed to be sufficiently reliable in order to ensure that security of supply was maintained. When the gas facility was functionally complete, in line with the specifications, and able to deliver gas to Delimara 3, then the First Gas Date was considered to have occurred.
- 6.2.5 Gas deliveries pursuant to the GSA were to be attained by the Scheduled Gas Availability Date, established as 18 months after the Schedule Start Date, that is, 14 October 2016. ElectroGas Ltd was to ensure that the gas facility was completed and operational on or before this date, including the testing specified in the GSA. The facility was to be maintained and operated so as not to have a material adverse effect on the operation and maintenance of Delimara 3. On its part, Enemalta was to provide the required load for the purposes of testing. Enemalta was also to provide such assistance that ElectroGas reasonably requested in connection with the interface of Delimara 3 with the gas facility.

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- 6.2.6 Following queries by the NAO, the Office established that gas deliveries were not made and the gas facility was not complete and fully operational by the Schedule Start Date, that is, 14 October 2016. Enemalta informed the NAO that the First Gas Date, and therefore the Gas Availability Payment Commencement Date, was achieved on 16 March 2017. Correspondence submitted by ElectroGas Ltd to Enemalta, as well as the independent engineer's report, which was submitted to both parties, confirming 16 March 2017 as the Gas Availability Date, was reviewed by the NAO.

Phase 1 Gas Delivery and Phase 2 Gas Delivery

- 6.2.7 The key project deliverables in terms of the GSA were linked to the conversion of Enemalta's Delimara 3 plant. This conversion did not fall within the ambit of the GSA, as responsibility in this respect rested with Enemalta; however, this process of conversion was integral to the deliverables of the GSA. The conversion was to be undertaken in two stages. Delimara 3 Phase 1 denoted the point in time when the first four diesel engines of Delimara 3 were converted to gas and gasoil fuel operation, while Delimara 3 Phase 2 indicated the point in time when the remaining four diesel engines of Delimara 3 were converted to gas operation. Once converted, Delimara 3 was to operate on gas sourced from the gas facility that was to be constructed by ElectroGas Ltd.
- 6.2.8 According to the GSA, ElectroGas Ltd was to ensure that its gas facility was completed and functioning within 18 months from the Schedule Start Date, understood as 14 April 2015. Therefore, the Scheduled Phase 1 Gas Delivery Date was to be attained by 14 October 2016. In other words, by 14 October 2016, the first four engines at Delimara 3 converted to operate on gas and gasoil were to source the required fuel from the ElectroGas Ltd gas facility.
- 6.2.9 The next milestone to be achieved with respect to the GSA was the Scheduled Phase 2 Gas Delivery Date, set for 24 months after the Schedule Start Date. Therefore, by 14 April 2017, the ElectroGas Ltd gas facility was to supply fuel required by the remaining four engines at Delimara 3, now fully converted to operate on gas.
- 6.2.10 The NAO noted that Delimara 3 Phase 1 was not achieved by 14 October 2016. Based on documentation reviewed, this Office ascertained that according to the independent engineer, the Phase 1 Gas Delivery Date was achieved on 16 March 2017. In the independent engineer's report, it was noted that the regasification plant had successfully completed the 72-hour reliability and two-hour performance test subject to a number of conditions and deviations to the performance test procedure and acceptance of all parties to perform these tests at throughputs below the flowrates stated in the performance test procedure. Furthermore, the gas receipt station for Delimara 3 power plant also completed the two-hour performance test subject to the same conditions, deviations and acceptance. Also noted was that the gas receipt station for the Delimara 4 power plant was not tested or examined during this testing period as the stability of this plant's gas consumption could not be attained.

6.2.11 Similar delays were noted in the attainment of the Scheduled Phase 2 Gas Delivery Date, set for 14 April 2017. In correspondence submitted to ElectroGas Ltd, dated 9 November 2017, Enemalta confirmed that the Phase 2 Gas Delivery Date had been achieved on 28 September 2017.

Testing

6.2.12 The GSA stipulated a number of provisions regulating the testing that ElectroGas Ltd was to undertake at key phases of the project, and the obligations of each party in this respect. To this end, ElectroGas Ltd was to develop testing procedures and a testing programme for approval by Enemalta. In terms of the GSA, ElectroGas Ltd was required to give advance written notice to Enemalta of not less than 90 days of the nature and anticipated dates of the gas facility acceptance tests that were to be undertaken.

6.2.13 Also stipulated in the GSA was that Enemalta was to assist through the provision of load for all the tests, and was to dispatch Delimara 3 Phase 1, Delimara 3 Phase 2 and Delimara 4 up to their maximum respective outputs for the purposes of testing. Enemalta, through its nominated representatives, was entitled to be present during the testing carried out. Moreover, an independent engineer, appointed by ElectroGas Ltd with the prior written approval of Enemalta to act jointly on behalf of the parties for the purposes of monitoring, inter alia, the construction of the facilities and the performance of the tests, was also to be present.

6.2.14 The following series of tests were to be undertaken in relation to the gas facility, in the following order:

- a. gas facility phase 1 functional tests;
- b. gas facility phase 1 performance acceptance tests;
- c. gas facility phase 1 reliability tests;
- d. gas facility phase 2 performance acceptance tests; and
- e. gas facility phase 2 reliability tests.

The tests in each series had to be duly completed and have met or exceeded the pre-set criteria prior to the commencement of subsequent tests. Furthermore, a failure in any one requirement or capability would require the repeating of that element of the test.

6.2.15 The gas facility phase 1 functional tests were to assess the capabilities of the gas facility relative to the correct operation of all mechanical and electrical protective, control and monitoring systems, and redundant system changeover. Furthermore, measurements were to be taken to establish that storage tanks met the specific capacity requirement, that is 125,000 cubic metres.

- 6.2.16 Subsequently, the gas facility phase 1 performance acceptance tests were to be carried out. These tests were to gauge performance against operating parameters set out in the GSA through the carrying out of two tests. The first entailed testing the safety and efficient operation of the gas facility, together with all auxiliary plant, equipment and services, at a stable capacity for a continuous period of two hours. The second test involved the estimation of the time required from start to full capacity and then to fully stopped. The times were to meet certain parameters as provided in the GSA. An emergency shutdown was also to be tested.
- 6.2.17 Following the phase 1 performance acceptance tests, the gas facility phase 1 reliability tests were to be conducted to determine the stability, safety and efficiency of operation. During these tests, the gas facility together with all auxiliary plant, equipment and services required, were to be started remotely and automatically, and remain in operation for a continuous 72-hour period under different demanded gas delivery rates. If an outage occurred prior to the completion of the gas facility phase 1 reliability tests, then these tests were to be repeated.
- 6.2.18 Following the conclusion of Delimara 3 Phase 1 testing and the conversion of the remaining four engines to operate on gas, Delimara 3 Phase 2 testing was to commence. This testing entailed the gas facilities phase 2 performance acceptance tests and reliability tests, comparable in terms of procedure to those executed in Delimara 3 Phase 1 testing. Once the gas facilities acceptance tests were duly completed, ElectroGas Ltd was to supply Enemalta with a certificate or declaration of conformity to the requirements of the GSA.
- 6.2.19 Queries relating to the testing that was to be undertaken were submitted to Enemalta by the NAO. Enemalta informed the Office that a Performance Test Procedure and a Reliability Test Procedure for the Delimara LNG Regasification Terminal, as well as a Phase 2 Gas Facilities Performance Test Procedure, had been established for this purpose. Enemalta indicated that the testing procedures were developed by ElectroGas Ltd through their contractors J&P Avax. Although the GSA stipulated that Enemalta was to formally approve these procedures, Enemalta indicated that it had not issued formal approval in this respect and instead delegated this decision to the Independent Engineer. The Performance Test Procedure and Reliability Test Procedure were in fact reviewed by the Independent Engineer in February 2017.
- 6.2.20 Another discrepancy noted by the NAO in terms of adherence to the GSA related to the notice that was to be given by ElectroGas Ltd in relation to testing. In submissions made to this Office, Enemalta specified that it had included a minimum of 90 days' written notice due to commitments over power purchase from other suppliers and grid demand considerations. Nonetheless, Enemalta maintained that, in view of the commercial advantage of having the plant online in an expedited manner, it intentionally accepted a shorter notice period.
- 6.2.21 Notification with respect of the gas facilities phase 1 site acceptance tests was received on 4 March 2017, while that relating to the gas facilities phase 2 acceptance tests was received on 10 July 2017. Enemalta specified that it had not witnessed these tests directly, but that the Independent Engineer had been present during testing.

- 6.2.22 In response to queries by the NAO regarding the phase 1 performance acceptance tests and reliability tests, Enemalta stated that certification by the Independent Engineer confirming the successful completion of these tests was submitted on 11 March 2017. This implied that the availability of the gas facilities was equal or greater than the phase 1 original gas availability, essential in meeting the demand of the Delimara 3 plant at phase 1. The report by the Independent Engineer was dated 23 March 2017.
- 6.2.23 In submissions made to this Office with respect to the phase 2 performance acceptance tests and reliability tests, Enemalta specified that these were completed successfully on 8 September 2017 and 10 September 2017, respectively. In essence, the test procedures for Phase 2 testing were similar to that of Phase 1, with the exception of loads intended for eight engines as opposed to the four engines tested during phase 1. Moreover, testing with respect to Phase 2 was undertaken by Reganosa on behalf of ElectroGas Ltd. These tests were certified by the Independent Engineer, with a final report received by Enemalta on 4 October 2017. Notwithstanding this, Enemalta indicated that the Delimara 3 Phase 2 Acceptance was achieved on 28 August 2017, with the following day being the date of commencement of commercial operations. This was conditionally accepted by Enemalta, subject to the outcome of testing.

Delayed Gas Delivery Date and Deemed Availability

- 6.2.24 If the testing carried out resulted in a positive outcome, that is, if the gas being delivered to Enemalta by ElectroGas Ltd was equivalent to or greater than that required for Delimara 3 Phase 1 operations at full load, then the Phase 1 Gas Delivery Date was achieved. However, for matters of precision, the GSA stipulated that this was to be reckoned as two days following Enemalta's receipt of the required certification by the independent engineer. Similarly, the Phase 2 Gas Delivery Date was to be accordingly established once the gas being delivered was determined as equivalent to, or greater than, that required for Delimara 3 Phase 2 operations at full load.
- 6.2.25 Without prejudice to any rights of Enemalta pursuant to the termination clauses stipulated in the IA, the GSA provided for action to be taken if the Scheduled Phase 1 Gas Delivery Date and/or the Scheduled Phase 2 Gas Delivery Date were not met. In the GSA, ElectroGas Ltd acknowledged that Enemalta would incur damages if, due to reasons attributable to ElectroGas Ltd, the latter was unsuccessful in attaining the Phase 1 Gas Delivery Date or the Phase 2 Gas Delivery Date on or before the Scheduled Phase 1 Gas Delivery Date or the Scheduled Phase 2 Gas Delivery Date, respectively.
- 6.2.26 Delays in any of the scheduled delivery dates, and the resulting liquidated damages due to Enemalta by ElectroGas Ltd in case of such setbacks, were contemplated in the GSA. ElectroGas Ltd was to pay Enemalta €15,000 in liquidated damages for every day, or part thereof, of delay from the Scheduled Phase 1 Gas Delivery Date until the earlier of the:
- a. Phase 1 Gas Delivery Date;

- b. termination of the Project Agreements; or
- c. date falling 180 days after the Scheduled Phase 1 Gas Delivery Date, defined in the GSA as the Last Phase 1 Gas Delivery Date.

6.2.27 Likewise, the GSA established the liquidated damages payable by ElectroGas Ltd in the case that it did not attain the Phase 2 Gas Delivery Date by the Scheduled Phase 2 Gas Delivery Date. In the case of such delay, ElectroGas Ltd was to pay liquidated damages to Enemalta of €5,000 for each day, or part thereof, of delay from the Scheduled Phase 2 Gas Delivery Date until the earlier of the:

- a. Phase 2 Gas Delivery Date;
- b. termination of the Project Agreements; or
- c. date falling 180 days after the Scheduled Phase 2 Gas Delivery Date, defined in the GSA as the Last Phase 2 Gas Delivery Date.

6.2.28 Despite the above provisions, the GSA stipulated a limit on delay liquidated damages payable by ElectroGas Ltd. The GSA also outlined that ElectroGas Ltd's liability to pay delay liquidated damages pursuant to the Supply Agreements was limited to €18,000,000. The GSA stipulated that Enemalta's right to claim delay liquidated damages was the exclusive remedy for failure by ElectroGas Ltd to attain the Phase 1 or Phase 2 gas delivery dates by the stipulated deadlines. This was without prejudice to any right of Enemalta to issue a termination notice and other measures outlined in the IA with respect to non-conforming supply, among others. Further noted in the GSA was that ElectroGas Ltd was not to be liable towards Enemalta for delays, attributable to Enemalta, in the attainment of:

- a. the First Gas Date, that is, the date on which the gas facilities were able to deliver gas to Delimara 3; or
- b. the Gas Availability Date, that is, the earlier of the date on which the Phase 1 Gas Delivery Date or the Open Cycle Energy Delivery Date occurred.

6.2.29 The GSA also included provisions relating to the failure to realise the project within the determined timeframes due to causes outside the control of either Enemalta or ElectroGas Ltd. In case the implementation of the project was prevented, hindered or delayed due to such circumstances, ElectroGas Ltd was to provide notice to Enemalta as soon as practicable following the occurrence of the delay, default or circumstance, indicating the particulars thereof and its net effect on the attainment of scheduled targets. ElectroGas Ltd was obligated to make all reasonable efforts to reduce delays, acting as a reasonable and prudent operator. The GSA outlined procedures in relation to such delays, defaults or circumstance, including Enemalta's liability to pay gas availability payments in this respect.

6.2.30 In response to queries raised by the NAO, Enemalta submitted documentation indicating that certification by the Independent Engineer of completion of phase 1 was achieved on 11 March 2017. While the Scheduled Phase 1 Gas Delivery Date was 14 October 2016, the Phase 1 Gas Delivery Date was achieved on 16 March 2017, that is, two days following the receipt of the interim report by the Independent Engineer. Similar delays were noted with respect to the Scheduled Phase 2 Gas Delivery Date, which was set for 14 April 2017. The Phase 2 Gas Delivery Date was achieved on 28 September 2017, two days after receipt of the independent engineer’s report by Enemalta.

6.2.31 The NAO ascertained that the Phase 1 Gas Delivery Date and the Phase 2 Gas Delivery Date were achieved by ElectroGas Ltd prior to the Last Phase 1 Gas Delivery Date and the Last Phase 2 Gas Delivery Date, respectively. However, the delays in attainment of the Phase 1 and Phase 2 Gas Delivery Dates by their scheduled dates resulted in the imposition of liquidated damages by Enemalta on ElectroGas Ltd. Based on the reports compiled by the independent engineer, the NAO established that a delay of 153 days and 166 days was evident in the achievement of the Phase 1 and Phase 2 Gas Delivery Dates, respectively. The NAO confirmed that Enemalta levied delay liquidated damages of €2,295,000, corresponding to the 153 days of delay, with respect to the failure to achieve the Phase 1 Gas Delivery Date by the scheduled date. No delay liquidated damages were charged by Enemalta with regard to Phase 2, for the €18,000,000 capping had been reached by the time these delays were realised. The capping had already been reached as a result of other delay liquidated damages levied by Enemalta on ElectroGas Ltd with respect to Phase 1 of the GSA and the PPA. The NAO sought to establish whether the delay liquidated damages were paid by ElectroGas Ltd; however, despite requests to this effect, Enemalta failed to provide any information in this regard.

Obligations following the First Gas Date

6.2.32 During the 18-year term of the GSA, ElectroGas Ltd was bound to make available and supply gas to Enemalta through the gas facilities. To this end and in addition to its other obligations pursuant to this Agreement, ElectroGas Ltd was to:

- a. operate and maintain the gas facilities in line with its commitments emanating from the GSA, relevant approvals, laws and manufacturer’s guidelines and instructions, the minimum functional specifications, and all other conditions of the Transaction Agreements;
- b. ensure that adequately competent and qualified personnel were deployed at the gas facility at all times;
- c. not modify the gas facility in a way that would affect the operating parameters without Enemalta’s prior written consent;
- d. use all reasonable endeavours to ensure that the gas facility was operated and maintained after the Gas Availability Date;

- e. use all reasonable efforts to ensure that it could meet its obligations pursuant to the GSA irrespective of whether or not gas was being supplied to Delimara 4; and
- f. not make available or supply gas or confer any right to the tendered gas availability to any person other than Enemalta.

Gas Tariffs

- 6.2.33 The GSA differentiated between the gas to be made available by ElectroGas Ltd and the gas to be supplied by ElectroGas Ltd when nominated by Enemalta. Gas Availability Payments were to be paid by Enemalta to ElectroGas Ltd as consideration for making gas available at the Delimara 3 connection point. On the other hand, Enemalta was to compensate ElectroGas Ltd for gas supplied at the Delimara 3 connection point through Gas Delivery Payments. Payments were to be made for every billing period, that is, for each calendar month, with tariffs based on a number of factors.
- 6.2.34 The Gas Availability Payment for a given month was to be determined through reference to a per unit rate, the quantity of gas made available and an adjustment factor. The unit rate was dependent on whether the given month fell within or outside of the base price period. The base gas availability charge applicable in the base price period and outside the base price period was established as €0.784 per mmbTU(HHV). However, the Gas Availability Payment outside the base price period was to be adjusted by applying an HICP factor to the base gas availability charge (Figure 27 refers).

Figure 27: GSA base price calculation

	Base Gas Availability Charge	HICP Factor
During base price period	€0.784/mmbTU	Not applicable
Outside base price period	€0.784/mmbTU	Applicable

- 6.2.35 With respect to the other factors cited in the calculation of the Gas Availability Payment, the sum of the hours in the billing period was to take into account the Demonstrated Gas Availability in respect of every hour and an adjustment factor to reflect any contract stock shortfalls attributable to ElectroGas Ltd (Appendix G refers).
- 6.2.36 The Gas Delivery Payment for a given month was to be the summation of an allowance in respect of gas cost recovery and another allowance relating to other operating costs, namely, the recovery of certain non-oil indexed or gas-hub related costs. The allowance pertaining to gas cost recovery was to be computed through reference to the effective commodity price for the billed month, expressed in €/mmbTU, and the gas delivered per hour in mmbTU at the Delimara 3 connection point, aggregated for the hours in the billing period. The effective commodity price for gas was to be established through reference to the value and quantity of opening stock and delivered stock during the billing period, which would give a per unit rate (€/

mmBTU). The allowance pertaining to the other operating costs was to be computed through reference to the total variable operating costs for gas, expressed in €/mmBTU, and the gas delivered per hour at the Delimara 3 connection point, expressed in mmBTU and aggregated for the hours in the billing period. The total variable operating cost for gas was established at €0.07/mmBTU during the base price period and was subject to HICP revisions outside of the base price period. The GSA further noted that the summation of the effective commodity price and the total variable operating costs constituted the effective gas price, expressed in €/mmBTU (Appendix G refers).

- 6.2.37 Provisions relating to the gas tariffs that were to apply in case of force majeure events were stipulated in the GSA. These considered the Gas Availability Payments and Gas Delivery Payments that were to apply in such circumstances. Furthermore, a factor of 1.1 was to be applied to the effective gas price in respect of any gas supplied to Enemalta prior to the completion of Delimara 3 Phase 1 or the Open Cycle Energy Delivery Date. All prices cited in the GSA excluded VAT and any taxes on sales, which taxes were to be charged in addition to the established tariffs.
- 6.2.38 As from the First Gas Date, that is, the date on which the gas facilities were able to deliver gas to Delimara 3, Enemalta was to notify ElectroGas Ltd of the quantity of gas energy that was to be made available on each day of the week, by not later than 10 days prior to the commencement of the relevant week. Furthermore, the GSA stipulated that if Enemalta failed to raise a nomination, then the corresponding quantity of the previous nomination was to apply. The GSA also outlined the procedure that was to be adhered to for the revision of submitted nominations. ElectroGas Ltd was obligated to deliver to the Delimara 3 connection point the daily nominated quantity of gas in line with the provisions of the GSA.
- 6.2.39 According to submissions made to the NAO, Enemalta maintained that it regularly notified ElectroGas Ltd of the quantity of gas energy that was to be made available according to the GSA provisions and asserted that there had been no instances when Enemalta failed to raise a nomination. On occasion, nominations were revised in accordance with the relevant GSA provisions. When queried as to whether ElectroGas Ltd delivered the quantities nominated, Enemalta indicated that, aside from instances when the regasification plant developed faults, the quantities nominated were delivered.
- 6.2.40 Figure 28 demonstrates the gas made available and delivered to Enemalta on a monthly basis from February 2017 to June 2018 based on invoices raised by ElectroGas Ltd in this respect. Between February 2017 and June 2018, ElectroGas Ltd made available and delivered 11,844,897 mmBTU and 4,160,119 mmBTU of gas to Enemalta, respectively.¹⁶ The corresponding invoiced amounts for Gas Availability and Gas Delivery were €14,309,041 and €48,957,424, respectively.

¹⁶ Gas Availability unit quantities for the period March 2017 to June 2017 and Gas Delivery unit quantities for February 2017 and March 2017 were not made available.

Figure 28: Gas Availability and Gas Delivery invoiced by ElectroGas Ltd, February 2017 - June 2018

Month	Gas Availability		Gas Delivery		Total
	Units (mmBTU)	Invoiced Amount (€)	Units (mmBTU)	Invoiced Amount (€)	Invoiced Amount (€)
February 2017	0	0	n/a	645,802	645,802
March 2017	n/a	485,000	n/a	2,380,088	2,865,088
April 2017	n/a	916,534	243,055	2,540,735	3,457,269
May 2017	n/a	947,086	274,851	2,902,450	3,849,536
June 2017	n/a	916,534	241,699	2,552,362	3,468,896
July 2017	1,021,515	945,024	343,115	3,800,153	4,745,177
August 2017	1,018,240	941,994	346,618	3,861,296	4,803,290
September 2017	990,720	916,534	500,097	5,571,030	6,487,564
October 2017	1,020,992	994,540	440,872	4,926,572	5,921,112
November 2017	988,656	914,625	85,807	958,857	1,873,482
December 2017	1,023,744	947,086	186,383	2,082,754	3,029,840
January 2018	1,023,744	947,086	191,052	2,134,924	3,082,010
February 2018	924,672	855,433	320,973	3,586,745	4,442,178
March 2018	861,632	833,051	179,699	2,008,067	2,841,118
April 2018	956,518	884,894	270,750	3,025,520	3,910,414
May 2018	1,023,744	947,086	304,522	3,402,916	4,350,002
June 2018	990,720	916,534	230,626	2,577,153	3,493,687
Total	11,844,897	14,309,041	4,160,119	48,957,424	63,266,465

Gas Quality

6.2.41 The gas that was to be delivered by ElectroGas Ltd in terms of the GSA was to conform with the Delimara 3 gas specifications cited in the IA. Included in these specifications were that the gas supplied was to have a minimum calorific value of 0.03038 mmBTU/Nm³, a methane content of at least 70 per cent, a maximum sulphur content of 30 mg/Nm³, carbon dioxide not exceeding 20 per cent in volume, and ammonia and particulate matter of less than 25 mg/Nm³ and 50 mg/Nm³, respectively. The quality of the gas delivered was to be established through quality testing procedures agreed between the parties.

6.2.42 Further stipulated in the GSA was the procedure that was to be applied in case of non-conforming gas. In these circumstances, ElectroGas Ltd was to inform Enemalta of known or foreseen gas deliveries not conforming to the specifications, and the likely duration of non-compliance. Enemalta could either accept or decline deliveries of non-conforming gas. If Enemalta accepted the delivery, then ElectroGas Ltd would not be liable for any damage caused to Delimara 3 resulting from the utilisation of such gas. The sole and exclusive remedy with respect to the provision of non-conforming gas was to be the application of a 20 per cent reduction in the then prevailing gas price. If Enemalta elected to refuse such gas, then ElectroGas Ltd was to pay for its removal and disposal. Such refusal was not to affect the liability of ElectroGas Ltd to pay any liquidated damages, which damages are further expounded on in the ensuing paragraphs.

- 6.2.43 In the event that non-conforming gas was delivered to Enemalta without notice, then ElectroGas Ltd was to indemnify Enemalta against the costs of any physical damage to Delimara 3 directly resulting from the use of such gas, including any resultant increased operating and maintenance costs.
- 6.2.44 In response to queries by the NAO, Enemalta noted that as at end June 2018, all gas delivered by ElectroGas Ltd in terms of the GSA was conformant with the Delimara 3 gas specifications indicated in the IA and that there had been no instances of supply of non-conforming gas.

Metering

- 6.2.45 The Delimara 3 connection point fulfilled a pivotal role in establishing the quantities of gas delivered and sold to Enemalta by ElectroGas Ltd. It was at this location that ElectroGas Ltd was to install, own and maintain a fiscal metering system, which was to determine the energy amounts for billing purposes or for the control of other contract parameters, necessary in establishing the quantity and quality of gas energy provided to Delimara 3 from the gas facility. Enemalta outlined that the fiscal metering system was installed as part of the Delimara 3 Gas Pressure Reduction Station (GPRS) assembly before March 2017. The GSA further stipulated that the required availability of the fiscal metering system was to be 99.9 per cent, which was to be achieved through appropriate levels of redundancy in the measuring systems. The system’s reliability was to be enhanced through the installation of dual gas fiscal flow meters, while quality was to be ascertained through double fitted gas chromatographs. The gas flow reading was to be based on the average value of both measurements.
- 6.2.46 ElectroGas Ltd was responsible for the calibration of the metering system, which was to be carried out at least once every two years. In the case of erroneous measurement of gas energy flow resulting from poor calibration, the GSA allowed for the parties to recover amounts overpaid in the case of Enemalta or amounts due in the case of ElectroGas Ltd. Furthermore, procedures to establish the gas energy delivered when the fiscal metering system was out of service were outlined. All expenses relating to the determination of gas delivery when the metering system was out of service were to be borne by ElectroGas Ltd.
- 6.2.47 ElectroGas Ltd was to determine the quantities of gas energy delivered at the Delimara 3 connection point on a daily, weekly and monthly basis. For billing purposes, these readings were to be recorded at the end of each month and made available to Enemalta. Moreover, the GSA stipulated that ElectroGas Ltd was to provide Enemalta with the following data and reports:
- a. online data regarding gas energy and gas volume counters at five-minute intervals;
 - b. chargeable gas energy data on a monthly basis, namely, hourly values of chargeable gas energy, normalised volume and calorific value of gas;

- c. on request, all hourly data in relation to the accountable fiscal metering system figures including applied corrections; and
- d. calibration results and agreed annual performance assessments.

Furthermore, ElectroGas Ltd was to maintain a log of fiscal metering system readings for a minimum of five years.

6.2.48 In terms of its daily reporting requirements, ElectroGas Ltd was to prepare and submit to Enemalta, by not later than three business days subsequent to the day to which it related, a statement indicating:

- a. the gas available for each hour;
- b. Enemalta's nomination for gas delivery for each hour;
- c. gas delivered to the Delimara 3 connection point in the day; and
- d. the status of the gas facilities for each hour.

6.2.49 Queries regarding the metering system were submitted to Enemalta by the NAO. With respect to the third-party certification of the system, Enemalta indicated that flow meter certification was obtained in February 2017; however, this excluded the Line 2 flow meter as it was faulty. This was replaced and subsequently certified in June 2017. Final third-party certification of the fiscal metering system was obtained in November 2017. Based on the documentation made available by Enemalta, the NAO ascertained that all conditions relating to the fiscal metering system were satisfied, with each of the two trains having an ultrasonic flow meter and a turbine flow meter, as well as the gas chromatograph and a dedicated flow computer.

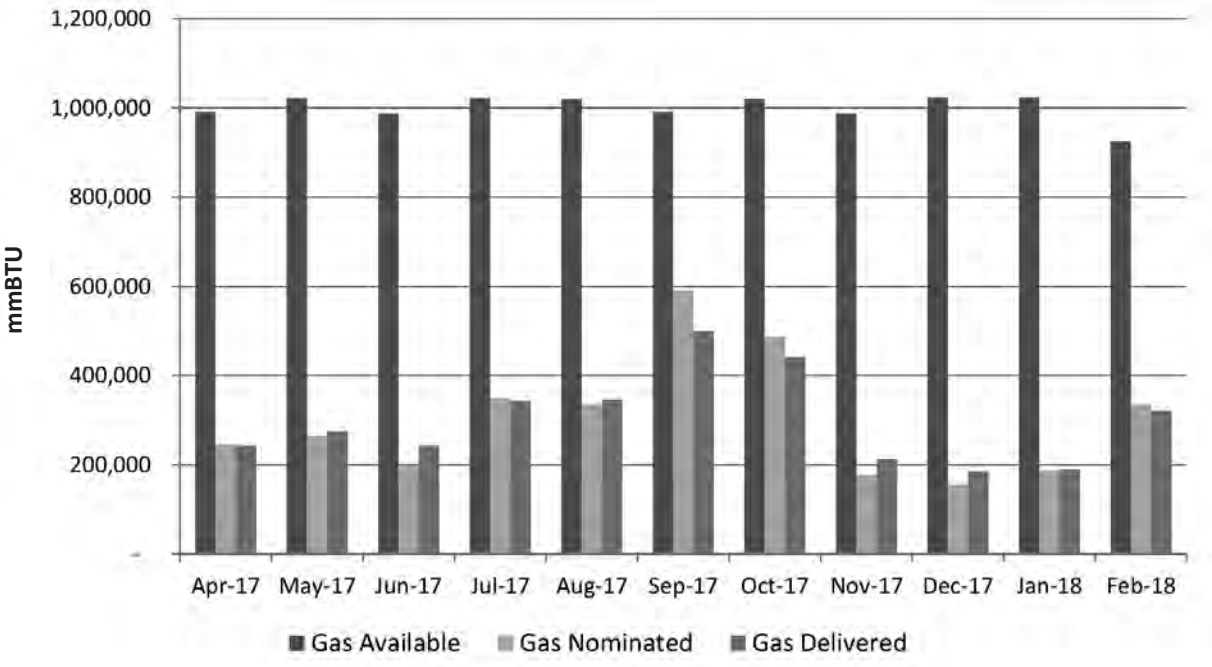
6.2.50 The NAO sought to establish whether there were any instances of erroneous measurement of gas resulting from poor calibration of the fiscal metering system. According to Enemalta, as at November 2017, there had been no recorded instances of erroneous measurement of gas. The only issue had been the failure of one flow meter in one leg of the fiscal metering system. In addition, Enemalta specified that there had been no instances when the fiscal metering system was not functional. The remote transmission of data was impaired for some time when gas first flowed to the Delimara 3 power plant. During that period, the registration of the main and check meters was manually collected from the system locally.

6.2.51 With regard to the measurement of gas energy delivered, Enemalta stated that ElectroGas Ltd was recording the amount of gas energy delivered at the Delimara 3 connection point. The GSA stipulated the recording of data at particular intervals and Enemalta confirmed that ElectroGas Ltd adhered with these requirements. However, in submissions to the NAO, Enemalta indicated that while the data was available, it had not been submitted by ElectroGas Ltd in the frequency

established in the GSA. Enemalta informed this Office that corrective action was taken in March 2018, with ElectroGas Ltd submitting statements in line with that stipulated in the GSA.

6.2.52 The NAO reviewed documentation relating to the hourly statements of gas available and delivered by ElectroGas Ltd and amounts nominated by Enemalta for the period 1 April 2017 to 24 February 2018. The indicated gas available was 1,376 mmBTU per hour throughout the period under review, bar an aggregate of 15 hours when the status of the gas facilities was compromised. Gas delivered during a particular hour ranged from 0 to 1,212 mmBTU. The NAO noted that, according to the hourly data provided, the gas delivered did not always tally with the nominated gas quantity. Differences in this respect ranged from 894 mmBTU of gas delivered more than nominated to a delivery of 2,437 mmBTU less than the nominated quantity. According to Enemalta, the gas facilities did not experience faults at any time during this period. Figure 29 presents monthly aggregates of the gas made available by ElectroGas Ltd, that nominated by Enemalta and that actually delivered for the period April 2017 to February 2018.

Figure 29: Monthly gas available, nominated and delivered, April 2017 - February 2018



Maintenance and Forced Outages

6.2.53 In order to minimise any mismatches in the supply of, and the demand for, gas, Enemalta and ElectroGas Ltd were to coordinate their respective planned annual maintenance programs for the facilities and Delimara 3. ElectroGas Ltd was required to submit a maintenance schedule 120 days before the start of each year. In no event was ElectroGas Ltd to be relieved of its obligations on account of any maintenance in respect of the gas facility. On the other hand, in no event was Enemalta to be relieved of its obligation to purchase gas on account of maintenance undertaken in respect of the gas facility, provided that the facility was able to meet quantities nominated.

6.2.54 In episodes of forced outages, that is, when the gas facilities were unable to operate at or above 80 per cent of the gas facilities phase 2 acceptance tests availability, save for exceptions outlined in the GSA, ElectroGas Ltd was not entitled to receive Gas Availability Payments from Enemalta. ElectroGas Ltd was to notify Enemalta immediately in this event and provide details of the causes for such outage and the time required to re-establish gas availability. The GSA further stipulated that unless otherwise stated, ElectroGas Ltd was to be liable for all costs incurred by it in relation to a forced outage.

6.2.55 In submissions made to this Office, Enemalta stated that ElectroGas Ltd had immediately notified Enemalta of forced outages and had provided details of the cause thereof and the time required to re-establish gas availability. Enemalta provided the NAO with a list of outages as at 5 March 2018 and, for each outage, provided the start of outage time, the time of recovery for Delimara 3 and Delimara 4 and the causes. In this respect, there were 11 forced outage events, namely, one in May 2017, one in July 2017, three in August 2017, three in October 2017, two in November 2017 and one in March 2018. Most affected the Delimara 3 plant for less than an hour, except for one outage that lasted for almost three hours. In another outage, Delimara 3 was not affected. While Delimara 4 was not affected in two of the forced outages registered, it was otherwise generally affected for a longer period of time than Delimara 3. Enemalta Gas Availability Payments were suspended for periods of forced outage.

Performance-related Damages

6.2.56 In cases where the average availability of the gas facilities fell below the acceptable level established in the Agreement, the GSA provided for the payment of performance liquidated damages. The Agreement specified the method of calculation that was to establish the average availability for the gas facilities during any period. This was to be determined by dividing the demonstrated gas availability averaged over all hours in the period by the gas facility phase 1 acceptance test availability or the phase 2 acceptance test availability, as applicable. In other words, the actual operating performance of the gas facility was to be measured against the benchmark set during testing.

6.2.57 In case of default, ElectroGas Ltd was to pay gas facilities performance liquidated damages of €125 for each percentage point shortfall for every day during the Gas Facilities Assessment Period, up to a daily maximum of €2,500. The Gas Facilities Assessment Period was defined in the GSA as each of:

- a. the period between the Gas Availability Date and the Energy Delivery Date;
- b. periods of two consecutive years commencing on the Energy Delivery Date;
- c. the part of the year ending on the termination date and the year prior to it; and
- d. any extension of the term if such extension was longer than one year.

- 6.2.58 Notwithstanding the above conditions, the GSA established that ElectroGas Ltd’s liability to pay performance liquidated damages in line with the Supply Agreements was to be limited to €1,000,000 pro-rated for each year, other than for the period prior to the Energy Delivery Date, in respect of which performance liquidated damages were to be limited to €500,000. ElectroGas Ltd acknowledged that the above dues were liquidated damages, were not a penalty, were fair and reasonable, and were a reasonable estimation of the loss to Enemalta consequent to a failure to maintain the acceptable gas facilities average availability.
- 6.2.59 In submissions made to the NAO, Enemalta stated that as at November 2017, there had been no cases when the average availability of the gas facilities had fallen below the acceptable level established in the GSA. This implied that no performance liquidated damages were levied by Enemalta.

Dispute Resolution Procedure

- 6.2.60 The GSA provided dispute resolution procedures that were to be adhered to in case of controversy, disagreement or dispute between the parties in the performance, interpretation or application of the Agreement. If Enemalta disputed any aspect of a daily statement, it was to inform ElectroGas Ltd of such a dispute and the basis thereof. If the parties were unable to resolve the matter and reach agreement on the daily statement in question within one month (or any other agreed period) from notification, either party could refer the issue to an expert in the area being disputed, appointed pursuant to the GSA, for determination. According to the GSA, other disputes that could be referred to an expert related to the quality and quantity of gas supplied as well as the verification and recalibration of the fiscal metering system, among other matters.
- 6.2.61 According to the GSA, where the Agreement provided for expert determination in relation to any issue, neither party was entitled to refer the dispute to arbitration. Furthermore, an expert’s decision was final and binding on the parties; however, where any of the parties disagreed with the expert’s decision, this could be referred to arbitration. In this case, notice was to be given to the other party within thirty days of the expert’s decision. If referred to arbitration, the decision of the expert was to be considered final and binding until any arbitral award to the contrary.
- 6.2.62 With respect to arbitration, the GSA noted that any arbitration between the parties was to be held and settled in Malta, and was to be conducted in accordance with the rules of the International Chamber of Commerce in force when the arbitration began. Furthermore, an arbitral tribunal was to be composed of three arbitrators. Each of the parties was to nominate an arbitrator and the two nominated arbitrators were to jointly propose the third, who was to be Chair. The award of the arbitral tribunal was to be final and binding on the parties.

Chapter 6

6.3 Implementation Agreement

6.3.1 ElectroGas Ltd and Enemalta entered into the IA on 14 April 2015. This Agreement provided the framework for the other Transaction Agreements. In accordance with the Supply Agreements, ElectroGas Ltd agreed to design, engineer, procure, construct, finance, install, test, commission, own, operate and maintain the facilities at the Delimara site, and to transfer these to Enemalta on expiry of the term. Moreover, ElectroGas Ltd agreed to procure LNG on a fixed and indexed price basis for utilisation as gas in Delimara 4 and delivery as gas to Delimara 3, and to procure and maintain the FSU for the term. Further included were take or pay provisions requiring Enemalta to consume or pay for established quantities of gas over particular reference periods. Enemalta could opt to consume these quantities as either gas for the Delimara 3 plant or as electricity dispatched from Delimara 4.

Effective Date and Term

6.3.2 The Effective Date of the IA, together with the PPA and the GSA, was contingent on the fulfilment, or waiver, of two conditions. First, ElectroGas Ltd was to enter into an LNG SPA with Socar Trading SA and second, Enemalta was to provide ElectroGas Ltd with a copy of the network code as at 20 December 2014. Both these conditions had been satisfied by the date of signing of the contracts and therefore, the Effective Date of the IA was 14 April 2015.

6.3.3 On the Effective Date, Enemalta and ElectroGas Ltd were to use reasonable endeavours to ensure that the following conditions, and those relating to the Financing Agreements, were satisfied or waived by the Final Effective Date.¹⁷ The conditions entailed that:

- a. Enemalta and ElectroGas Ltd had entered into the Site Services Agreement and the Electricity Connection Agreement;
- b. ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd had entered into the FSU Conversion and Charter Agreement, and the FSU owner had agreed with ElectroGas Ltd to adhere to the terms of the Interface Agreement;¹⁸
- c. ElectroGas Ltd and the O&M contractor had entered into the O&M Agreement;¹⁹
- d. Enemalta, the lenders,²⁰ the Government and ElectroGas Ltd, as applicable, had entered into the Direct Agreements, namely, the Supply Agreements Direct Agreement, the Site

¹⁷ The Financing Agreements refer to all loan agreements, notes, mortgages, indentures, security agreements, hedging agreements and other documents, if any, relating to the limited or non-recourse financing of the project, or any part thereof.

¹⁸ The Interface Agreement refers to the construction management and interface agreement entered into between ElectroGas Ltd, Siemens Aktiengesellschaft Österreich, J&P-AVAX SA, the FSU owner and URS Infrastructure and Environment UK Ltd, dated 12 December 2014.

¹⁹ The O&M Agreement refers to the agreement between ElectroGas Ltd and the O&M contractor, in this case, Siemens Industrial Turbomachinery AB, for the operation and maintenance of the facilities.

²⁰ Lender refers to any entity who is a party to any of the financing agreements and provides debt financing or credit, financing or credit support, credit enhancement, or hedging, to ElectroGas Ltd in connection with the project.

Services Agreement Direct Agreement, the Electricity Connection Agreement Direct Agreement, the Site Lease Deed Direct Agreement, and the SSA Acknowledgement and Consent;

- e. Government, Enemalta and ElectroGas Ltd had entered into the SSA;
- f. the Attorney General had issued an opinion addressed to ElectroGas Ltd in relation to the authorisation and capacity of the Government signatories to execute the SSA and the SSA Acknowledgement and Consent on behalf of the Government, which opinion was to satisfy ElectroGas Ltd;
- g. Enemalta Direct Agreements had been entered into, namely, the EPC Direct Agreements, the Enemalta FSU Charter Direct Agreement, the Enemalta FSU O&M Direct Agreement and the Enemalta LNG Supply Direct Agreement;²¹
- h. the Plant Manning Agreement had been entered into;
- i. Enemalta and ElectroGas Ltd had agreed on the maximum aggregate principal of the term loan under the Financing Agreements;
- j. legal opinions had been obtained confirming the authorisation and capacity of the signatories to the Transaction Agreements appearing on behalf of Enemalta and ElectroGas Ltd;
- k. the Know Your Customer (KYC) or other similar checks by the lenders and ElectroGas Ltd on Enemalta had been satisfactorily completed; and
- l. the Conversion Term Agreement had been entered into.

6.3.4 Prior to the Effective Date, Enemalta was to invoice ElectroGas Ltd for the Enemalta development fee, which charge corresponded to the €30,000,000 set for the acquisition of the SPC. This fee fell due on 19 December 2014 and was payable in 12 consecutive monthly instalments of €2,500,000. Stated in the IA was that ElectroGas Ltd had paid a number of instalments prior to the date of this Agreement.

6.3.5 The term of the IA was to commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, was to be in effect for a period of 18 years from the Open Cycle Energy Delivery Date, or as accordingly extended. Enemalta and ElectroGas Ltd agreed that, at the request of the other party, negotiations for the possible extension of the term of the Transaction Agreements, by such period and terms as may be agreed, could be initiated after the fourteenth anniversary of the Energy Delivery Date yet before the fifteenth anniversary of the Open Cycle Energy Delivery Date. In effect, based on later developments,

²¹ The Enemalta LNG Supply Direct Agreement refers to the Enemalta LNG SPA Direct Agreement.

the NAO established this period as August 2031 (14 years from the Energy Delivery Date) to April 2032 (15 years from the Open Cycle Energy Delivery Date).

- 6.3.6 The NAO sought to ascertain whether the conditions stipulated in the IA that were to be met by the Final Effective Date had in fact been satisfied or waived. All conditions were satisfied and are, in the majority, reported on in other sections of this report. Hereunder are the Office's observations regarding the remaining conditions.
- 6.3.7 In response to queries made by the NAO with regard to the Interface Agreement, Enemalta stated that this Agreement was entered into by ElectroGas Ltd, its project manager (URS), and various subcontractors and sought to manage the relationship and dependencies between ElectroGas Ltd's subcontractors. Enemalta indicated that it was not a party to this Agreement and reference to it in the IA was intended to ensure that the FSU Owner would become a party to the Interface Agreement and therefore fall within the project management scheme managed by URS. According to Enemalta, this was a requirement imposed on ElectroGas Ltd by the banks and financial institutions financing the project.²²
- 6.3.8 Another condition that was to be satisfied related to the opinion by the Attorney General with regard to the authorisation and capacity of the Government signatories to execute the SSA and the SSA Acknowledgement and Consent on behalf of the Government. The Attorney General provided this legal opinion on 19 December 2017, certifying that, according to the Constitution and the Laws of Malta, the Minister of Finance or another Minister authorised by Cabinet for such purpose could bind Government in civil and commercial obligations without the need for any further consent or approval. In this respect, reference was made to the Cabinet meeting convened on 13 November 2017, whereby Cabinet resolved that the Minister for Tourism, Dr Konrad Mizzi, was authorised to enter into the SSA, the SSA Acknowledgement and Consent, the Government Deed, a direct agreement in respect of the Government Deed and the Delimara Security Agreement. To this end, the Cabinet Secretary issued a letter, dated 27 November 2017, specifying that Cabinet had, on 13 November 2017, discussed two memoranda titled 'Progress in Refinancing of ElectroGas Malta Limited Bridge Loan secured by a Government Guarantee' and 'Termination of LNG Security of Supply Agreement' (further information regarding the LNG SSA and its termination is provided in section 8.1 of this report). Noted in this correspondence was that Cabinet had approved that the government guarantee be extended beyond the expected release date of 30 November 2017, until 31 December 2017, subject to State Aid Monitoring Board (SAMB) approval. Furthermore, Cabinet authorised the execution of the waiver and amendment of the bridge loan facility agreement on behalf of the Government by either or both the Minister for Finance and the Permanent Secretary MFIN. In addition, Cabinet authorised the execution of the SSA, the SSA Acknowledgement and Consent, the Delimara Security Agreement, the Agreement to terminate the LNG SSA, the emphyteutical grant of the jetty constructed on reclaimed land to ElectroGas Ltd, and the direct agreement related to the emphyteutical grant of the jetty to ElectroGas Ltd on behalf of

²² The Interface Agreement refers to the construction management and interface agreement entered into between ElectroGas Ltd, Siemens Aktiengesellschaft Österreich, J&P-AVAX SA, the FSU owner and URS Infrastructure and Environment UK Ltd, dated 12 December 2014.

Government. The Minister for Tourism was authorised to sign all these agreements while an officer responsible for government lands was authorised to sign the emphyteutical grant and its direct counterpart.

6.3.9 Other conditions satisfied related to the legal opinion that was to confirm the authorisation and capacity of the signatories to the Transaction Agreements appearing on behalf of Enemalta and ElectroGas Ltd, and KYC checks that were to be undertaken. In the case of the former, Enemalta and ElectroGas Ltd obtained the requisite legal opinions confirming the authorisation and capacity of the signatories on 19 December 2017 and 8 January 2017, respectively. In the latter case, Enemalta informed the NAO that, while it was not in possession of any document relating to the completion of KYC checks, these had to have been satisfactorily completed given the magnitude of the loans granted and the banks involved in the matter.

6.3.10 The NAO enquired with regard to the €30,000,000 Enemalta development fee that was to be charged to ElectroGas Ltd for the acquisition of the SPC. This Office established that the fee was paid by ElectroGas Ltd in 11 instalments. While a number of payments were made behind schedule, the total fee was paid on time.

Project Financing

6.3.11 The IA stipulated a number of provisions with respect to the financing of the project. Key in this respect was the understanding of financial closing, which corresponded to the date falling five business days after the fulfilment, or waiver, of the conditions stipulated in paragraph 6.3.3 and the Financing Agreements. Following the achievement of financial closing, ElectroGas Ltd was to immediately notify Enemalta of the first drawdown of funds pursuant to the Financing Agreements and provide evidence of the transfer.

6.3.12 ElectroGas Ltd had a number of reporting obligations to Enemalta in relation to the financing of the project. These entailed that:

- a. at least thirty days prior to financial closing, ElectroGas Ltd was to submit a schedule or a reference term sheet relating to the Financing Agreements, together with the maximum principal amounts, interest rate/s and any schedules or formulae for computation of fees and charges payable to the lenders on the winding up for early termination of the loans under the Financing Agreements. Given Enemalta’s obligation in relation to the security of supply, any objections to the terms or schedules of financing that could prejudice the provision of supply and by consequence, the security of supply, then Enemalta was to inform ElectroGas Ltd of such concerns within 15 business days of receipt of the schedule. Unless objections were received, this would imply that Enemalta was in agreement with the terms presented;
- b. ElectroGas Ltd provide Enemalta with a copy of the Financing Agreements within 15 days of execution and prior to the Final Effective Date, defined as the date on which ElectroGas Ltd informed Enemalta that financial closing had occurred;

- c. ElectroGas Ltd submit any amendments made to the Financing Agreements to Enemalta;
- d. periodical expenditure reports relating to the construction of the facilities and the utilisation of lenders' debt be submitted to Enemalta by ElectroGas Ltd;
- e. ElectroGas Ltd submit a list of each of its lenders and creditors to whom it owed at least US \$1,000,000, specifying the amount due under each loan and any changes registered since the previous year's list; and
- f. in case that ElectroGas Ltd was served with a notice relating to proceedings initiated or threatened to be initiated against it by any lender or creditor, then ElectroGas Ltd was to submit such notice to Enemalta within seven days of receipt and provide information regarding any further action taken by the lenders or creditors following such notice.

6.3.13 Further stipulated in the IA was the maximum aggregate principal of the term loan under the Financing Agreements. This was to be €380,000,000 on or prior to the energy delivery date and was to be amortised over a period. The maximum aggregate amounts payable by Enemalta in respect of the principal amounts outstanding and borrowed by ElectroGas Ltd to finance the project's capital cost were to be reduced by the quantity by which the ratio of such principal to the equity invested exceeded 80:20. Also outlined in the IA were instances where the maximum amounts and the indicated ratio were to be increased. These were in respect of:

- a. the maximum aggregate liabilities under letters of credit issued and in effect on the termination date;
- b. ElectroGas Ltd's obligations with regard to debt service and maintenance reserves;
- c. any borrowings by ElectroGas Ltd for financing of costs, losses and expenses incurred due to a force majeure or relief event such as a shortage of LNG or gas; and
- d. any rescheduling of indebtedness following a default by ElectroGas Ltd, provided that such rescheduling did not increase the aggregate principal amount outstanding under the term loan facilities.

On the other hand, the maximum amounts and the ratio were to be decreased with respect to amounts borrowed by ElectroGas Ltd to finance the project's capital cost that were prepaid by the company on the GSA exit date.

6.3.14 Further noted in the IA was that the maximum amounts did not include or cap any cost overrun facility provided under the Financing Agreements or any credit facility with respect to ElectroGas Ltd's working capital requirements, provided that Enemalta was not liable in respect of amounts drawn pursuant to a cost overrun facility after the Energy Delivery Date. However, a capping with respect to the principal amount of any working capital facility drawn

by ElectroGas Ltd and outstanding at the termination date of the Agreement was included and was not to exceed €40,000,000.

6.3.15 Queries regarding project financing, mainly focused on the reporting obligations of ElectroGas Ltd to Enemalta, were submitted by this Office. Essential in its role of oversight, Enemalta provided the NAO with construction monitoring reports prepared by the independent engineer. These reports, corresponding to the period October 2015 to February 2017, served to highlight the technical aspects of the construction and the performance of the acceptance tests. Although the independent engineer expressed reasonable satisfaction that the project was being implemented in accordance with the requirements of the technical specifications, various issues of concern that emerged throughout the project were highlighted. These included design and construction-related delays, FSU delivery delays, interfacing problems, quality issues relating to the jetty concrete and cryogenic pipework, as well as delays registered in terms of gas availability. The final construction monitoring report indicated the achievement of mechanical completion and the availability of gas to the Delimara 3 and Delimara 4 plants. At this stage, hot commissioning was underway, the FSU hired, and most pending issues resolved. Notwithstanding this, a few pending concerns were acknowledged.

6.3.16 The NAO also reviewed the monthly progress reports submitted to ElectroGas Ltd by its project manager, AECOM, also referred to as URS. Reports reviewed covered the period January 2015 to October 2017. The initial reports focused on taking stock of overall progress, with particular attention directed towards engineering, civil, structural, mechanical and electrical construction, as well as matters relating to interfacing. According to the May 2015 progress report, construction works fell behind schedule, which delays worsened from month to month. Delays were also noted with respect to the FSU. Cited in the progress report for August 2017 was the achievement of the Energy Delivery Date, a key milestone of the project. Aside from project-related progress, the monthly progress reports also provided a record of the periodical expenditure incurred. This Office noted that the monthly progress reports drawn up on behalf of ElectroGas Ltd were sufficiently detailed to provide Enemalta with visibility of developments registered with respect to the project. Rigorously detailed, the reports highlighted monthly progress with respect to contract status and issues, engineering progress, procurement, construction and commissioning activities, adherence to schedules, permitting requirements, as well as budget updates and variation orders among others.

6.3.17 Aside from the monthly progress reports, the NAO reviewed the minutes of meetings held between Enemalta and the representatives of ElectroGas Ltd, wherein matters of a technical nature were addressed. Meetings were held on a weekly basis, and served as the setting wherein action required on particular matters was coordinated between the parties.

6.3.18 In respect of the reference term sheet relating to the Financing Agreements that was to be submitted by ElectroGas Ltd, Enemalta provided the NAO with a draft Malta LNG to Power Project Financing Term Sheet dated 26 June 2017.

Site Leasing, Construction and Operation

- 6.3.19 The IA provided the framework according to which ElectroGas Ltd was to lease the site, undertake construction of the facilities and ensure that operations met the established requirements. On 16 December 2014, Enemalta leased part of the Delimara site to ElectroGas Ltd for the purposes of this project through the Site Lease Deed. In essence, this entailed that ElectroGas Ltd design, engineer, procure, finance, construct, install, test, commission, own, operate and maintain the facilities in accordance with the Transaction Agreements. To this end, ElectroGas Ltd could subcontract any of its obligations in line with these Agreements; however, this did not relieve ElectroGas Ltd from any obligations or potential liabilities.
- 6.3.20 Specific reference was made to the engagement of EPC and O&M contractors. Noted in the IA was that Siemens Aktiengesellschaft Österreich was to be engaged as the EPC contractor in relation to Delimara 4, while J&P–AVAX SA was to be the EPC contractor for the gas facilities, excluding the FSU. With regard to the appointment of the O&M contractor, the relevant details were to be provided by ElectroGas Ltd to Enemalta prior to the final effective date. The NAO subsequently established that Siemens Industrial Turbomachinery AB was engaged as the O&M contractor.
- 6.3.21 ElectroGas Ltd was to ensure that, at all times from April 2016 (six months prior to the Scheduled Open Cycle Energy Delivery Date) until the end of the LNG supply term, it was a party to at least one LNG supply agreement with a reputable LNG supplier. This requirement was to be satisfied with ElectroGas Ltd entering into an LNG SPA with Socar Trading SA.
- 6.3.22 Noted in the IA was that the PPA and the GSA formed a large proportion of Enemalta's total requirements of electricity and gas, and bore a critical influence on the security of supply in Malta. Against this background, ElectroGas Ltd acknowledged that, despite its principal obligation being the supply of electricity and gas, as well as full responsibility for the energy facilities, it was required to continually prove its ability to provide the supplies required in line with the PPA and the GSA in compliance with license and permit conditions. Accordingly, ElectroGas Ltd was to:
- a. observe the minimum functional specifications established in the IA; and
 - b. grant Enemalta the right to observe the ongoing compliance by ElectroGas Ltd to the Transaction Agreements, in particular, with respect to the attainment of milestones by their scheduled dates.
- 6.3.23 The scope for further cooperation between the parties was outlined in the IA. Specified was that Enemalta could, at a future date, consider entering into negotiations with ElectroGas Ltd to increase its requirements for gas and energy, subject to mutual agreement.

Reports, Audit and Independent Assessment

- 6.3.24 Stipulated in the IA was that ElectroGas Ltd was to install an accounting system and appoint as auditors a firm of independent chartered accountants. ElectroGas Ltd was to provide Enemalta with various reports in relation to the facilities, including a programme for the construction of the facilities, updated process flow diagrams, updated project management team diagrams and staffing plans. Other reports that were to be made available to Enemalta by ElectroGas Ltd after the Effective Date included a report on any factors that might materially and adversely affect the project or ElectroGas Ltd’s business and operations, monthly progress reports in relation to the completion of the facilities, and updates to the construction programme, identifying any impacts on the achievement of established milestones.
- 6.3.25 ElectroGas Ltd was to grant Enemalta access to the leased premises to observe progress of the construction of the facilities and to undertake any audit, investigation or inspection to verify whether the conditions of the Transaction Agreements were complied with. Furthermore, Enemalta, or its designated representative, was to have access to the accounts of ElectroGas Ltd relating to the construction of facilities.
- 6.3.26 The IA stipulated that, following the Energy Delivery Date, ElectroGas Ltd and Enemalta were to engage an independent assessor to compile a yearly report to ascertain whether ElectroGas Ltd was adhering to the maintenance obligations set out in the Transaction Agreements. The independent assessor was to be appointed through the mutual agreement of the parties. Reporting in this respect was to focus on the then current state of the facilities, including maintenance, repairs and improvements carried out within the year of reporting and those planned for the ensuing year. Failure of ElectroGas Ltd to comply with the indicated maintenance requirements entitled Enemalta to withhold five per cent from each Energy Availability Payment and Gas Availability Payment, until the required maintenance was undertaken. Enemalta was to settle withheld payments on completion of the required maintenance works by ElectroGas Ltd.

Supply Reference Periods

- 6.3.27 The IA provided for a number of supply reference periods and listed contractual obligations in relation thereto. An Enemalta take or pay quantity, representing a specified volume of gas which could be consumed in the form of net electrical output or gas supplied to Delimara 3, equivalent to the Enemalta contract quantity applicable, was specified for each supply reference period.
- 6.3.28 The first supply reference period was the Early Gas Period, which was to commence on 14 August 2016, that is, 16 months after the Schedule Start Date. A Take or Pay Year was to commence on this date. The Early Gas Period was to end one day prior to the LNG Supply Term Commencement Date, established as 14 April 2017.

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6.3.29 Subsequent to the Early Gas Period was the LNG Supply Term. The LNG Supply Term had two distinct stages, the Fixed Price LNG Supply Term and the Indexed Price LNG Supply Term. The Fixed Price LNG Supply Term was to expire after five years, at which point the Indexed Price LNG Supply Term would commence. The supply reference period for the Fixed Price LNG Supply Term was three months, that is, a Take or Pay Quarter. During the Indexed Price LNG Supply Term, each supply reference period was of one year, termed a Take or Pay Year. The Indexed Price LNG Supply Term was to terminate on the earlier of the termination date, the GSA exit date, four years and four months from commencement of this Term, or following any extension to this Term in line with that stipulated in the IA. Enemalta and ElectroGas Ltd could request an extension of the Indexed Price LNG Supply Term during the eighth year of the LNG Supply Term. On such request, the parties were to negotiate the extension and the effective commodity price applicable during the extended term. The price proposed by ElectroGas Ltd was to be indexed and could not exceed the value stipulated in the IA. This was to be calculated in terms of delivered quantities, a commodity multiplier, the exchange rate and the Brent price. Enemalta and ElectroGas Ltd were to reach agreement on or before nine years from the LNG Supply Term Commencement Date. Otherwise, on the day subsequent to the expiry of the aforementioned period of four years and four months from the start of the Indexed Price LNG Supply Term, the Energy and Gas Conversion Term would commence.

6.3.30 A Conversion Term was to commence following the LNG Supply Term. This period was to start from the earlier of the Energy and Gas Conversion Term (commencing following the expiry of the Indexed Price LNG Supply Term) or the Energy Conversion Term (commencing from any GSA exit date), to the Termination Date. The IA stipulated that Enemalta and ElectroGas Ltd were to commence negotiations to agree to a Conversion Term Agreement by not later than six months after the Schedule Start Date or a later date as agreed between the parties. The Conversion Term Agreement was to address the commitment and liability of Enemalta and ElectroGas Ltd in respect of the delivery by Enemalta and/or the taking by ElectroGas Ltd of gas and/or LNG for the operation, maintenance, testing and making available the facilities by ElectroGas Ltd. The supply reference period was to be as provided in the Conversion Term Agreement and the Enemalta contract quantity during this period was to be zero.

Planning, Dispatch, Stocks and LNG Supply

6.3.31 The IA provided for the planning, dispatch and stock for Delimara 4 and the gas facilities. To this end, ElectroGas Ltd and Enemalta were to meet within one year of the Effective Date, and at least every six months thereafter, to plan the economic dispatch of Delimara 4 and the planned usage of the gas facilities, taking into account:

- a. alternative power supply sources available to Enemalta;
- b. alternative power customers available to Enemalta;
- c. the amount of LNG and gas in stock and the maximum storage capacity of the gas facilities;

- d. take or pay obligations of ElectroGas Ltd and Enemalta and any other commitments undertaken in order to ensure supply;
- e. planned LNG deliveries, quantities and timing;
- f. ElectroGas Ltd and Enemalta’s obligations in relation to take or pay and the scheduled take; and
- g. the actual contract stock and the contract stock requirement during the LNG Supply Term and the Energy and Gas Conversion Term.

In submissions made to this Office, Enemalta noted that meetings in this respect between Enemalta and ElectroGas Ltd were held on 13 April 2017, 14 September 2017, 29 December 2017 and 8 March 2017.

6.3.32 The IA defined actual contract stock as the amount of LNG held by ElectroGas Ltd in the gas facilities, less that required to maintain the FSU at a specified temperature and that in transit. The contract stock requirement varied according to the stages of the project, with 4,000m³ of LNG on or after the Gas Availability Date, 16,000m³ of LNG on or after the Open Cycle Energy Delivery Date and 20,000m³ of LNG on or after the achievement of the Gas Availability Date and the Open Cycle Energy Delivery Date. While the LNG Supply Term referred to the fixed price LNG supply term and the indexed price LNG supply term, the Energy and Gas Conversion Term corresponded to the period after the expiry of the indexed price LNG supply term.

6.3.33 When making dispatch and nomination decisions, Enemalta was to take into consideration the following:

- a. the strategic requirement to maintain a minimum level of LNG and gas in stock;
- b. the practical requirement to ensure sufficient ullage to enable LNG deliveries to be effected; and
- c. the reasonable take or pay obligations entered into by ElectroGas Ltd, prior to the expiry of the LNG Supply Term, to secure supply of LNG and gas.

6.3.34 ElectroGas Ltd also had a number of obligations in relation to the supply of LNG and the LNG carriers. During the Early Gas Period, the LNG Supply Term and the Energy and Gas Conversion Term, ElectroGas Ltd was to ensure the minimisation of disruptions to its operations and to those of the Marsaxlokk Port through its scheduling of refurbishment or replacement of the FSU. Furthermore, ElectroGas Ltd was to provide and maintain storage for LNG and gas at the gas facilities, and was to maintain additional LNG stock and storage capacity as required. With regard to LNG carriers, ElectroGas Ltd was to keep Enemalta informed of expected delivery dates, berthing periods and maximum capacity, among other matters. ElectroGas

Ltd was also to provide Enemalta with information relating to each vessel delivering LNG to the FSU. Information required in this respect entailed the volume of LNG to be delivered, the scheduled arrival date of the LNG vessel and the specifications of the LNG supplied, necessary in ensuring conformity with the parameters stipulated in the IA. Enemalta was to provide this information to ElectroGas Ltd during the Energy and Gas Conversion Term. Queries regarding the adherence of ElectroGas Ltd to these obligations were addressed to Enemalta by the NAO. In its reply, Enemalta noted that ElectroGas Ltd provided information related to the level of LNG stocks in the FSU on a regular basis and also provided updates with regard to scheduled LNG consignments. On its part, Enemalta would query the status of the consignment delivery on the indicated consignment scheduled dates.

6.3.35 The IA provided for other reporting requirements in relation to LNG and gas following the earlier of the Gas Availability Payment Commencement Date or the Open Cycle Energy Delivery Date. Particularly, ElectroGas Ltd was to submit a monthly report to Enemalta specifying for each hour:

- a. the amount of LNG and gas used by the facilities;
- b. the amount of LNG and gas delivered by the facilities to Delimara 3;
- c. the actual contract stock; and
- d. the volumes of gas flared at the facilities.

The NAO reviewed documentation submitted by ElectroGas Ltd to Enemalta in this respect. For the period April 2017 to March 2018, approximately 8,900,000 mmBTU and 3,500,000 mmBTU of gas was sent to Delimara 4 and Delimara 3, respectively.

6.3.36 Stipulated in the IA was that ElectroGas Ltd would be liable to pay Enemalta an additional energy cost for every hour should the actual contract stock be zero following the Gas Availability Payment Commencement Date and during the LNG Supply Term and the Energy and Gas Conversion Term. The additional energy cost, provided this was not less than zero, was to be calculated through reference to the replacement energy cost, defined as the marginal cost of procuring replacement electrical energy, starting with the lowest priced electrical energy sources available. In determining the additional energy cost, the replacement energy cost less the effective commodity price was to be multiplied by the assumed loss generation. The assumed loss generation was the average net energy per hour in MWh delivered from Delimara 3 and Delimara 4 to the network during the 168 hours of normal operation immediately prior to the actual contract stock being less than the contract stock requirement. Notwithstanding this, ElectroGas Ltd was exempt from such payments when a contract shortfall was due to force majeure or to other circumstances beyond the control of the parties. ElectroGas Ltd bore no liability for such payments during the supply reference period in which the GSA Exit Date or the termination date occurred, or when the contract stock requirement was reduced in

accordance with provisions in the IA. Further stipulated was that Enemalta’s right to make claims for additional energy costs and seek compensation through adjustments to the Energy Availability and the Gas Availability payments were to be its exclusive remedies for any failure by ElectroGas Ltd to maintain LNG, fuel or gas stocks in quantities equal to or higher than the contract stock requirement.

6.3.37 Defined in the IA was the contract volume, which referred to the amount of gas and equivalent net electrical output for each quarter. For the quarters commencing on 1 January and 1 October during the fixed price LNG supply term, the contract volume specified was 3,000,000 mmBTU. For the quarters commencing on 1 April and 1 July during the fixed price LNG supply term, the contract volume specified was 4,000,000 mmBTU. In the indexed price LNG supply term, the contract volume was 14,000,000 mmBTU for each gas year. The IA allowed for an element of upward flexibility in contract volumes that Enemalta was entitled to request. However, additional volumes were not to exceed 2,000,000 mmBTU in any given year during the LNG supply term. This capping similarly applied to any given quarter, provided that the annual threshold was not exceeded.

6.3.38 In order to plan for the sourcing of LNG, by 23 June, Enemalta was to provide ElectroGas Ltd with a non-binding annual forecast prior to the commencement of the gas year on 1 October. The forecast was to specify the amount of energy and the amount of gas that Enemalta was to dispatch and nominate from each of the Delimara 4 and the gas facilities on a monthly basis.

6.3.39 In turn, ElectroGas Ltd was to submit to Enemalta an annual delivery plan by the 9 September of each year. The plan was to indicate the:

- a. source of each cargo of LNG;
- b. the scheduled arrival window/date of each cargo;
- c. the estimated quantity of LNG to be unloaded per cargo;
- d. the proposed LNG vessel; and
- e. any other information that Enemalta and ElectroGas Ltd agreed on.

6.3.40 Furthermore, Enemalta was to provide ElectroGas Ltd with a three-month ahead forecast on dates as specified in Figure 30. These forecasts were to stipulate the net electrical output and the amount of gas that Enemalta was to dispatch and nominate from each of Delimara 4 and the gas facilities during the period indicated. The amounts of net electrical output and gas specified in the forecasts were equal to the Enemalta contract quantity and allowed for a variation of +/- 20 per cent of the volume of gas for the previous month.

Figure 30: Forecast submissions

Date for Submission	Forecast for Month
1 – 9 October	January
1 – 9 November	February
1 – 9 December	March
1 – 9 January	April
1 – 9 February	May
1 – 9 March	June
1 – 9 April	July
1 – 9 May	August
1 – 9 June	September
On or prior to 2 August	October, November and December

- 6.3.41 Enemalta submitted to this Office an excerpt of a three-month ahead forecast, showing an hour-by-hour forecast of aggregate demand and supply categorised by source, and costings.
- 6.3.42 On the other hand, ElectroGas Ltd was to provide Enemalta with its specific delivery schedule for the following three months by the end of each calendar month. The schedules were to set out the source of each LNG cargo, the method of discharge of the cargo, scheduled arrival windows/dates, the estimated quantity of LNG to be unloaded per cargo, the proposed LNG ship, and any additional information Enemalta and ElectroGas Ltd agreed to be included.
- 6.3.43 Also specified in the IA was the possible sourcing of additional contract quantities of gas and/or equivalent net electrical output by Enemalta. Any additional sourcing was over and above the contract volume and the upward flexibility contract quantity. As at February 2018, Enemalta had not sourced additional contract quantities of gas and/or equivalent net electrical output. When requested, ElectroGas Ltd was to obtain quotes for cargoes of LNG in relation to the additional quantities and inform Enemalta of relevant charges. Quoted prices were to be based on the additional cargo price, be on an open book basis, allow ElectroGas Ltd a profit margin of 2.5 per cent and take into account any adjustments required to shipping schedules. In addition, Enemalta was entitled to request ElectroGas Ltd to maintain a physical stock of LNG in addition to the contract stock requirement for an agreed period. As at February 2018, no such requests were made by Enemalta. Aside from the charge levied by ElectroGas Ltd for the additional stock, Enemalta was to be provided with a quote for reimbursement due to ElectroGas Ltd for any increase in costs or decrease in revenues arising from maintaining the additional contract stock. If ElectroGas Ltd was unable to procure the additional stock, then Enemalta had the right to source additional cargo. ElectroGas Ltd was obligated to accept delivery of such cargo as additional contract stock; however, aside from these provisions, Enemalta was not to require that ElectroGas Ltd maintain stock in excess of the contract stock requirement.
- 6.3.44 If at any time during the term of the Supply Agreements, Enemalta actually took quantities of gas and net electrical output equal to the Enemalta Take or Pay Quantity, then it could, by nomination and dispatch instructions, utilise any remaining stocks of LNG. If the quantities

of gas and net electrical output taken by Enemalta exceeded the Enemalta Take or Pay Quantity during a supply reference period, then ElectroGas Ltd was to endeavour to procure the required stock, while Enemalta was to compensate ElectroGas Ltd for any decrease in its revenues resulting from such procurement. As at February 2018, there were no instances when the quantities of gas and net electrical output taken by Enemalta had exceeded the Enemalta Take or Pay Quantity during the relevant supply reference period.

6.3.45 Various queries were raised by the NAO regarding the adherence by Enemalta and ElectroGas Ltd to the provisions relating to planning, dispatch and stock management outlined in the IA. As regards dispatch and nomination decisions of LNG and gas Enemalta stated that, in order to fulfil these obligations, it had to forecast gas consumption to a reasonable degree. For this purpose, Enemalta developed a software to predict demand for electricity. In addition, in order for Enemalta to keep track of the FSU LNG stock position, the Delimara 3 and Delimara 4 gas consumption and the FSU LNG stock position were electronically monitored on an hourly basis. Furthermore, information regarding the planned consumption between one gas consignment and another was regularly shared with ElectroGas Ltd in order to ensure that adequate stocks were available and that sufficient ullage was available for maintaining adequate FSU temperature. Enemalta indicated that this also ensured that take or pay obligations were respected. Moreover, Enemalta noted that gas consumption schedules were agreed on between Enemalta and ElectroGas Ltd so that the gas consignment days were scheduled and confirmed three months in advance.

6.3.46 According to the IA, ElectroGas Ltd was liable to pay Enemalta an additional energy cost for shortfalls in actual contract stock. In reply to queries by NAO about additional energy stocks and adjustments to the energy availability and gas availability payments for failure by ElectroGas Ltd to maintain stock levels at the contract stock requirement, Enemalta stated that as at April 2018, ElectroGas Ltd had always provided adequate LNG stocks. However, Enemalta noted that adjustments had been made in the gas availability payment because of failures of the gasification plant, resulting in a shortfall of gas for Delimara 3. In addition, an adjustment to the energy availability payment was made when the gasification plant tripped, which in turn affected Delimara 4.

6.3.47 Essential in the sourcing of LNG requirements was Enemalta’s dispatch and nomination annual forecast that was to be submitted to ElectroGas Ltd. In this respect, the forecast submitted by Enemalta to ElectroGas Ltd for 2018 is illustrated in Figure 31.

Figure 31: Energy generation and gas consumption forecast, 2018

	D4	D3	D4	D3	Total Gas	D4	D3
Month (2018)	Availability (MWh)	Availability (MWh)	Consumption (mmBTU)	Consumption (mmBTU)	Consumption (mmBTU)	(MWh)	(MWh)
January	151,776	96,720	1,025,100	118,589	1,143,689	139,850	14,641
February	92,064	90,816	674,829	131,571	806,400	92,064	16,243
March	66,888	110,112	490,289	402,081	892,370	66,888	49,640
April	106,680	106,560	753,971	127,108	881,079	102,861	15,692
May	151,776	110,112	977,463	52,880	1,030,343	133,351	6,528
June	146,880	106,560	1,038,815	15,076	1,053,891	141,721	1,861
July	151,776	110,112	1,112,518	323,264	1,435,782	151,776	39,909
August	151,776	110,112	1,112,518	521,801	1,634,319	151,776	64,420
September	146,880	106,560	1,069,264	432,339	1,501,602	145,875	53,375
October	151,776	110,112	1,040,816	157,490	1,198,306	141,994	19,443
November	146,880	106,560	945,013	51,962	996,975	128,924	6,415
December	151,776	110,112	992,687	223,784	1,216,471	135,428	27,628

6.3.48 Equally important was the annual delivery plan that was to be submitted by ElectroGas Ltd to Enemalta by 9 September each year. Following queries by the NAO, Enemalta indicated that ElectroGas Ltd submitted an annual delivery plan on 17 August 2017, of the tentative LNG cargo delivery dates but not the respective LNG volumes. Subsequently, on 16 October 2017, ElectroGas Ltd submitted an updated delivery plan including different tentative LNG cargo delivery dates and the respective LNG volumes. Reproduced in Figure 32 is the final plan submitted by ElectroGas Ltd. The NAO noted that information regarding the source of each LNG cargo and the proposed LNG vessel was not included in these plans.

Figure 32: Annual delivery plan submitted by ElectroGas Ltd, 2017 - 2018

LNG Cargo Delivery Dates	LNG Volume (m ³)
4 October 2017	35,000
21 October 2017	100,000
11 December 2017	100,000
6 February 2018	100,000
12 April 2018	100,000
5 June 2018	100,000
25 July 2018	100,000
13 September 2018	100,000

6.3.49 The specific delivery schedules that were to be provided by ElectroGas Ltd to Enemalta, corresponding to the period March 2017 to April 2018 were reviewed by the NAO. Enemalta informed this Office that the specific delivery schedules were raised by Socar Trading SA and submitted through ElectroGas Ltd. No schedule was provided for April 2017 and August 2017. For April 2017, ElectroGas Ltd submitted a substitute document specifying that, in light of a lack of clarity from Enemalta, ElectroGas Ltd’s intention was to bring 100,000m³ of cargo on 23 and 24 June 2017. While all estimated discharge quantities, arrival windows and LNG vessels were indicated, not all supply sources were identified in these schedules.

Enemalta Take or Pay and Scheduled Take

6.3.50 As indicated above, for each supply reference period, a quantity of gas that was to be equal to the Enemalta contract quantity applicable to that reference period was to be established. The quantity of gas calculated would constitute the Enemalta Take or Pay Quantity.

6.3.51 During the Early Gas Period, the Enemalta contract quantity, which was to be equivalent to the Enemalta Take or Pay Quantity, was to be the sum of the Early Gas Contract Quantity, which was to be determined by August 2015 as either zero or one cargo of LNG provided that this was in the range of 2,500,000 mmBTU to 3,000,000 mmBTU, and any additional contract quantity of gas and/or equivalent net electrical output. In submissions made to the NAO, Enemalta noted that it had nominated a quantity of gas equivalent to one cargo with a volume of 13,525m³, equivalent to 316,044 mmBTU. No additional contract quantity had been requested during the Early Gas Period. The NAO understood that Enemalta paid the difference between the stipulated range of 2,500,000 mmBTU to 3,000,000 mmBTU and the nominated quantity of gas of 316,044 mmBTU in terms of its take or pay obligations. Despite requests for clarification submitted to Enemalta, no replies were forthcoming.

6.3.52 During the LNG Supply Term, the Enemalta contract quantity consisted of the contract volume and any upward revisions effected by Enemalta. As indicated in paragraph 6.3.37, the annual contract volume during the LNG Supply Term amounted to 14,000,000 mmBTU.

6.3.53 The IA stipulated a number of factors that would decrease the Enemalta Take or Pay Quantity during any supply reference period, namely:

- a. all quantities of gas taken by Enemalta;
- b. all nominated gas quantities in accordance with the GSA that were not delivered for reasons attributable to ElectroGas Ltd or were declined by Enemalta due to non-conformity with gas specifications;
- c. all quantities of non-conforming gas that ElectroGas Ltd delivered to Delimara 3 without notice to and the opportunity to decline provided to Enemalta;

- d. all quantities of net electrical output taken by Enemalta and converted to gas;
- e. all dispatch instructions for net electrical output that were not delivered for reasons attributable to ElectroGas Ltd;
- f. any amounts of gas established as follows, excluding reasons beyond the control of ElectroGas Ltd (Appendix H refers):
 - i. to compensate Enemalta for the failure of ElectroGas Ltd to achieve the First Gas Date by the Early Gas Commencement Date;
 - ii. to compensate Enemalta for the failure of ElectroGas Ltd to complete the gas facilities after the Gas Availability Date despite achievement of the First Gas Date;
- g. any quantities of net electrical output established as follows, excluding reasons beyond the control of ElectroGas Ltd (Appendix I refers):
 - i. prior to the Open Cycle Energy Delivery Date, to compensate Enemalta for the failure of ElectroGas Ltd to achieve the Open Cycle Acceptance Date for any of the gas turbines by two months after the Early Gas Commencement Date;
 - ii. to compensate Enemalta in the event that Delimara 4 was not available after the Open Cycle Energy Delivery Date;
- h. the volume of any diversion cargo delivered to an alternative delivery point on the request of Enemalta to ElectroGas Ltd in accordance with the terms of the IA; and
- i. the volume of LNG sold by ElectroGas Ltd on the written request of Enemalta in accordance with the IA.

6.3.54 Queries regarding deductions to the Enemalta Take or Pay Quantities were referred to Enemalta by the NAO. In response, Enemalta noted that, as at April 2018, most of the deductions to the Enemalta Take or Pay Quantity were incurred during the ordinary course of business, namely on the basis of paragraph 6.3.53, sub-points a and d. Aside from these, deductions were also made on the basis of sub-points b and g, due to a gas availability loss amounting to 1,426mmBTU during October and November 2017, and due to an energy availability loss amounting to a deduction of 733,726mmBTU of gas from April to October 2017 and 464,147mmBTU of gas from October 2017 to January 2018, respectively.

6.3.55 At the end of each supply reference period, ElectroGas Ltd was to establish the portion of the Enemalta Take or Pay Quantity not availed of during the period, which quantity was to be referred to as the Enemalta Take or Pay Deficiency. The Enemalta Take or Pay Deficiency payment was to be calculated through reference to the applicable average effective commodity price for the relevant supply reference period and the quantity of gas not taken (Appendix J refers).

6.3.56 According to Enemalta, as at April 2018, there were two instances when an Enemalta Take or Pay Deficiency was established. These occurred at the end of year 1 quarter 4 where the deficiency amounted to 127, 134mmBTU, and at the end of year 2 quarter 1, where the deficiency amounted to 112,883mmBTU.

6.3.57 Considered in the IA was the possibility for Enemalta to recover a portion of the Take or Pay Deficiency that arose in the previous supply reference period through a quantity of gas and equivalent net electrical output, referred to as Enemalta Make up Gas. The Enemalta Make up Gas was not to exceed one third of the Enemalta Take or Pay Quantity of the preceding Supply Reference Period and could not exceed the relevant Enemalta Take or Pay Deficiency. Furthermore, the Enemalta Make up Gas was not to be taken into account when determining the Enemalta Take or Pay Quantity (for the purpose of determining whether there was an Enemalta Take or Pay Deficiency) in the supply reference period in which it was taken. Enemalta was not liable to pay the Energy Delivery Payment or the Gas Delivery Payment with respect to the Enemalta Make up Gas. Enemalta informed the NAO that the instances of Enemalta Take or Pay Deficiency cited in the preceding paragraph were fully recovered as Enemalta Make up Gas during the following Supply Reference Period. In addition, Enemalta Take or Pay Deficiency payments were effected in accordance with the terms of the IA.

6.3.58 Also considered was the possible sale of LNG corresponding to the Enemalta Take or Pay Deficiency arising in a particular supply reference period. ElectroGas Ltd was to, on the request by Enemalta, use reasonable efforts to sell to third parties an amount of LNG nominated by Enemalta. This amount was not to exceed two thirds of the Enemalta Take or Pay Quantity in a particular supply reference period and was not to exceed the Enemalta Take or Pay Deficiency, taking into consideration Enemalta Make up Gas. The sale of LNG in this respect was referred to as an Enemalta Mitigation Sale. Within 30 days of an Enemalta Mitigation Sale, ElectroGas Ltd was to pay Enemalta an Enemalta LNG credit. The Enemalta LNG credit was to be determined through the addition of the proceeds and any savings obtained by ElectroGas Ltd from the sale, less any incremental costs and taxes incurred. In addition, ElectroGas Ltd was to deduct 2.5 per cent of the difference between the proceeds and the amount paid by Enemalta for the LNG. Enemalta informed the NAO that, as at April 2018, no Enemalta Mitigation Sales had been effected.

6.3.59 During the LNG Supply Term, there were to be scheduled take periods of one calendar month. For each scheduled take period, Enemalta was to nominate and take an amount of gas at the Delimara 3 connection point and/or dispatch and take delivery of net electrical output at the Delimara 4 connection point. In aggregate, the amount of gas and net electrical output was to be equal to the amount of gas and energy specified in the forecast corresponding to the scheduled take period. These amounts were referred to as Enemalta's Scheduled Take Obligation.

6.3.60 Specified in the IA were factors that excused Enemalta from the Scheduled Take Obligation during a given Scheduled Take Period, namely:

- a. nominated gas quantities in accordance with the GSA that were not delivered, other than for reasons beyond the control of ElectroGas Ltd, or that were rejected by Enemalta as non-conforming gas;
- b. all quantities of non-conforming gas that ElectroGas Ltd delivered to Delimara 3 without notice and the opportunity for Enemalta to decline;
- c. all dispatch instructions for net electrical output during the relevant Scheduled Take Period that were not delivered, other than for reasons beyond the control of ElectroGas Ltd;
- d. any amounts of gas established as follows, excluding reasons beyond the control of ElectroGas Ltd (Appendix K refers):
 - i. to compensate Enemalta for the failure of ElectroGas Ltd to achieve the First Gas Date, in respect of whole or part of Scheduled Take Periods, by the Early Gas Commencement Date;
 - ii. to compensate Enemalta for the failure of ElectroGas Ltd to make the gas facilities available, in respect of whole or part of Scheduled Take Periods, after the Gas Availability Date;
- e. any quantities of net electrical output established as follows, excluding reasons beyond the control of ElectroGas Ltd (Appendix L refers):
 - i. prior to the Open Cycle Energy Delivery Date, to compensate Enemalta for the failure of ElectroGas Ltd to achieve the Open Cycle Acceptance Date for any of the gas turbines, in respect of whole or part of Scheduled Take Periods, in whole or in part by the LNG Supply Term Commencement Date;
 - ii. to compensate Enemalta in the event that Delimara 4 was not available, in respect of whole or part of Scheduled Take Periods, after the Open Cycle Energy Delivery Date;
- f. the volume of any diversion cargo delivered to an alternative delivery point at the request of Enemalta to ElectroGas Ltd in accordance with the terms of the IA during a Scheduled Take Period; and
- g. any volume of LNG sold by ElectroGas Ltd at the written request of Enemalta in accordance with the terms of the IA during a Scheduled Take Period.

6.3.61 Aside from the Enemalta Mitigation Sale, which allowed Enemalta to request ElectroGas Ltd to sell LNG to third parties in cases of Enemalta Take or Pay Deficiency, the IA provided for Enemalta Scheduled Take Mitigation Sale. In such cases, on request by Enemalta, ElectroGas Ltd was to sell to third parties an amount of LNG in a Scheduled Take Period as nominated by Enemalta. The amount of LNG sold through an Enemalta Scheduled Take Mitigation Sale was capped at the amount specified for the particular Scheduled Take Period and compensation payable by ElectroGas Ltd to Enemalta was determined as the Enemalta LNG Credit, as outlined in paragraph 6.3.57.

6.3.62 The IA provided that Enemalta reimburse ElectroGas Ltd for costs incurred in attempts at mitigating any adverse effects of a Scheduled Take Failure, that is, Enemalta’s failure to honour Scheduled Take Obligations. Enemalta was to reimburse ElectroGas Ltd for reasonable and verifiable costs and taxes incurred in this respect less any savings obtained and payments already effected by Enemalta.

6.3.63 The NAO sought to ascertain whether the above-cited obligations were adhered to by Enemalta. With respect to the Scheduled Take Obligations, for each month as from the LNG Supply Term Commencement Date to date, Enemalta nominated and took delivery of amounts of gas for Delimara 3 and electricity from Delimara 4 which, in aggregate, were equal to the amounts specified in the three-month ahead forecast submitted by Enemalta. Documentation in this respect comprised an excerpt of a schedule submitted by Enemalta to ElectroGas Ltd, wherein the 2018 forecast for Delimara 4 MWh generation, Delimara 4 gas consumption, and total gas consumption for Delimara 3 and Delimara 4 was indicated. In addition, Enemalta provided information relating to the gas consumed by (sent to) Delimara 4, and gas consumed by (sent to) Delimara 3, from April 2017 to March 2018.

6.3.64 According to Enemalta, there had been instances, albeit rare, where Enemalta was excused from its Scheduled Take Obligation. This was either due to ElectroGas Ltd not being able to deliver the quantities of gas nominated by Enemalta for Delimara 3 as a result of faults in the regasification plant and/or the FSU, or due to ElectroGas Ltd failing to deliver the whole or part of the dispatch instructions relating to Delimara 4, owing to trips of the whole or part of the plant.

6.3.65 In addition, Enemalta confirmed that, as at April 2018, no Scheduled Take Mitigation Sales were requested by Enemalta. Furthermore, while Enemalta acknowledged that there were some variations in Enemalta’s consumption when compared to the volumes in the three-month ahead forecast, this did not result in any adverse consequences to Enemalta.

Conversion Term and ElectroGas Ltd Take or Pay

6.3.66 Every year during the Conversion Term, Enemalta was to provide a non-binding annual forecast to ElectroGas Ltd, specifying the quantities of energy and gas that Enemalta would dispatch and nominate from Delimara 4 and the gas facilities during each month. This forecast was to be submitted by 23 June prior to the commencement of the relevant gas year. In turn, five days from receipt, ElectroGas Ltd was to provide Enemalta with a demand forecast for LNG and/or the gas required to meet the forecast and amounts required to operate, maintain and test the facilities in accordance with the Transaction Agreements.

6.3.67 According to the IA, Enemalta was to provide ElectroGas Ltd with a non-binding annual delivery plan and delivery schedule for LNG by 5 September of each year during the Energy and Gas Conversion Term. The plan was to specify the source of each LNG cargo, the scheduled arrival window/date of each cargo, the estimated quantity of LNG to be unloaded per cargo, the proposed LNG vessel, and additional information that Enemalta and ElectroGas Ltd agreed on.

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- 6.3.68 During the Energy and Gas Conversion Term, Enemalta was to provide ElectroGas Ltd with a non-binding specific LNG delivery schedule for the following three-month period, submitted on the last day of each calendar month. Such a schedule was to specify the source of each LNG cargo, the method of discharge, the scheduled arrival/window, the estimated quantity of LNG to be unloaded per cargo, the proposed LNG vessel, and any additional information Enemalta and ElectroGas Ltd agreed on. Enemalta could amend the schedule provided that ElectroGas Ltd was given seven days' notice.
- 6.3.69 Subject that Enemalta had designed, constructed, commissioned and tested the Gas Receiving Connection Point, the IA allowed for Enemalta to deliver gas to the gas facility in compliance with the Delimara 4 gas specifications. Enemalta was to consult ElectroGas Ltd on the Gas Receiving Connection Point. The amounts of LNG and/or gas to be delivered by Enemalta were to be determined in line with the supply forecast submitted by ElectroGas Ltd and the Conversion Term Agreement.
- 6.3.70 Further stipulated in the IA was the procedure to be adopted should the gas or LNG specifications not be met for deliveries made by Enemalta to ElectroGas Ltd during the Conversion Term. In these circumstances, Enemalta was to inform ElectroGas Ltd of known or foreseen gas or LNG deliveries not conforming to specifications, and the likely duration of non-compliance. ElectroGas Ltd could either accept or decline such deliveries of non-conforming supply. However, if ElectroGas Ltd accepted the delivery, Enemalta would not be liable for any damage caused to the facilities occurring from the utilisation of such gas or LNG. If, on the other hand, ElectroGas Ltd refused such gas or LNG, Enemalta was to pay for its removal and disposal. If Enemalta did not notify ElectroGas Ltd about the delivery of non-conforming gas, then Enemalta was to indemnify ElectroGas Ltd against costs ensuing from physical damage to the facility and any increased operating and maintenance costs directly attributable to such supply. The IA capped Enemalta's liability in this respect at 120 per cent of the value of the non-conforming supply delivered. Furthermore, ElectroGas Ltd was to be relieved of any liability to Enemalta for deliveries of non-conforming gas by Enemalta to Delimara 3 if such supply was not in compliance with the Delimara 3 Gas Specifications.
- 6.3.71 The IA further stipulated the metering procedures to be adopted for the gas and LNG delivered by Enemalta, and the testing procedures for the meters. Furthermore, provisions regarding the nomination procedures for delivery of gas by Enemalta were included in this Agreement.
- 6.3.72 Similar to the LNG sales to be carried out by ElectroGas Ltd in the Early Gas Period or the LNG Supply Term, the IA provided for gas or LNG sales (as applicable) to be carried out by Enemalta during the Energy and Gas Conversion Term. On instruction by ElectroGas Ltd, Enemalta was to endeavour to market and sell gas or LNG to third parties at the best available price, or sell to a third party in a sale brokered and agreed to by ElectroGas Ltd. The quantity of LNG to be sold in this manner was to be the ElectroGas Ltd Take or Pay Deficiency and was to be nominated by ElectroGas Ltd. Within 30 days of each sale, Enemalta was to pay ElectroGas Ltd a supply credit established through the addition of the proceeds and any savings obtained by Enemalta

through the sale, less any incremental costs and taxes incurred. In addition, Enemalta was to deduct 2.5 per cent of the difference between the proceeds and the amount paid by ElectroGas Ltd for such gas or LNG.

Risk of Loss of, Title to and Property of Gas and LNG

- 6.3.73 The risk of loss of, title to and property of gas and LNG delivered pursuant to the GSA was to pass from ElectroGas Ltd to Enemalta at the Delimara 3 Connection Point. Any taxes, duties or other expenses in relation to gas or LNG, if levied at or downstream of the Delimara 3 Connection Point were to be borne by Enemalta, while if levied upstream, were to be borne by ElectroGas Ltd.
- 6.3.74 On the other hand, under a scenario of operation under the Conversion Term Agreement, the risk of loss of, title to and property in gas and LNG delivered by Enemalta was to pass from Enemalta to ElectroGas Ltd at the Gas Receiving Connection Point, the LNG Connection Point or the Delimara 4 Connection Point, as the case may be. Any taxes, duties or other expenses in relation to gas or LNG, if levied at or downstream of any of the aforementioned connection points were to be borne by ElectroGas Ltd, while if levied upstream, were to be borne by Enemalta.

Payment Terms

- 6.3.75 Specified in the IA was that ElectroGas Ltd was to submit to Enemalta a reconciliation statement following the end of each month of each supply reference period and set out the information that was to be submitted in this regard. The reconciliation statement was to entail:
- a. if prior to the LNG Supply Term Expiration Date:
 - i. the Enemalta Contract Quantity for the relevant Supply Reference Period;
 - ii. the Enemalta Take or Pay Quantity and any reductions therefrom; and
 - iii. the Enemalta Take or Pay Deficiency, as well as the balance of previously accrued deficiencies;
 - b. the quantity of any Enemalta Make up Gas and the Gross Calorific Value thereof;
 - c. subject to acceptance by Enemalta, the ElectroGas Take or Pay Deficiency and any deficiency balances accrued;
 - d. the net electrical output delivered by ElectroGas Ltd to Enemalta;
 - e. the gas price applicable;
 - f. details of any payments made;

- g. volumes of LNG delivered to the FSU; and
- h. invoices received from LNG suppliers and any amounts paid by ElectroGas Ltd.

The NAO ascertained that a reconciliation statement following the end of each month of each supply reference period was submitted by ElectroGas Ltd to Enemalta. To this end, Enemalta submitted reconciliation statements relating to April 2017 to February 2018, the period reviewed by this Office.

6.3.76 ElectroGas Ltd was to submit to Enemalta a tax invoice within 10 days of the end of a billing period, with payment to be effected within 30 days from receipt. The tax invoice was to be denominated in euro and was to indicate:

- a. the Energy Availability Payment;
- b. the Energy Delivery Payment;
- c. the Gas Availability Payment;
- d. the Gas Delivery Payment;
- e. Additional Charges;
- f. the quantity of gas and its gross calorific value delivered by ElectroGas Ltd to the Delimara 3 Connection Point;
- g. with respect to gas delivered:
 - i. the volume and methane number of gas deemed delivered;
 - ii. the volume and sulphur content of gas deemed delivered;
 - iii. any associated Delimara 3 gas specification credit liability;
 - iv. Delimara 3 gas specification credit due; and
 - v. current Delimara 3 gas specification credit outstanding;
- h. the net electrical output delivered;
- i. amounts payable to Enemalta for LNG and gas;
- j. amounts payable in respect of the Enemalta Take or Pay Deficiency and/or the ElectroGas Ltd Take or Pay Deficiency;
- k. the applicable gas and commodity prices corresponding to the relevant billing periods;
- l. the amounts set out in the three-month ahead forecast, any valid deduction from the

Enemalta Scheduled Take Obligation and amounts due from Enemalta in respect of a Scheduled Take Failure;

- m. volumes of LNG delivered to the FSU;
- n. invoices received from LNG suppliers and corresponding amounts paid by ElectroGas Ltd;
- o. amounts due by ElectroGas Ltd in respect of contract stock shortfalls;
- p. amounts reimbursable to ElectroGas Ltd; and
- q. any other sums payable by one party to the other.

6.3.77 The IA included provisions regulating carbon credits with respect to Delimara 4. In this respect, ElectroGas Ltd was to apply for and obtain a greenhouse gas permit for Delimara 4 from the MRA and to submit a monitoring plan outlining how annual emissions from Delimara 4 were to be monitored. In turn, Enemalta was to acquire allowances equal to the emissions specified in a verified emissions report of Delimara 4 and transfer the allowances to ElectroGas Ltd. Enemalta was to bear the cost of these allowances. If the verified annual carbon emissions of Delimara 4 exceeded the annual forecasted emissions, ElectroGas Ltd was to pay Enemalta the reasonable cost of the acquisition of the required additional allowances.

6.3.78 In relation to each cargo of LNG procured, ElectroGas Ltd was to calculate the methane number, which calculation was to be provided to Enemalta not later than the date of delivery. In submissions made to the NAO, Enemalta stated that D3 Power Generation Ltd recorded the gas composition as measured by a fiscal chromatograph installed at the GPRS, which was the tie-in point for gas supply to Delimara 3. The methane number was calculated from an internal database used by D3 Power Generation Ltd using the gas composition data. If the methane number was between 75 and 80, ElectroGas Ltd was to pay Enemalta a Methane Number Credit, which was capped at €500,000 in respect of cargoes delivered in any gas year. The Methane Number Credit was to be calculated through reference to the actual methane number as compared to a methane number of 80 a rate of €0.25 and the volume of gas deemed delivered to the Delimara 3 Connection Point (Appendix M refers). Gas with a methane number of less than 75 was deemed non-conforming gas and could be rejected by Enemalta. In reply to queries submitted by this Office, Enemalta stated that the methane number of each cargo was calculated in accordance with the provisions of the IA. According to Enemalta, there was one instance where the methane number of a cargo had been between 75 and 80. In this case, Enemalta stated that the provisions of the IA were to be applied in relation to the said cargo. There were no instances when the methane number of a cargo had been below 75.

6.3.79 A similar mechanism to the Methane Number Credit was in place with respect to the sulphur content of gas. Enemalta noted that Delimara 3 was equipped with a calibrated continuous emission monitoring system on each stack, measuring flue gas emission levels and recording

these on an hourly basis. This was used to confirm the sulphur content in the flue gas at stack output of the Delimara 3 plant. If the sulphur content of gas delivered to the Delimara 3 Connection Point on average exceeded 4 mg/Nm³ during any gas year, then ElectroGas Ltd was liable to pay Enemalta:

- a. €16,000 for each 0.1 mg/Nm³ in excess of the 4mg/Nm³ threshold, up to 27 mg/Nm³; and
- b. €2 for each mmbTU of gas delivered by ElectroGas Ltd to Enemalta at the Delimara 3 Connection Point with a sulphur content in excess of 27 mg/Nm³ and up to 30 mg/Nm³.

6.3.80 The Sulphur Content Credit was not to exceed €3,000,000 per gas year, or €4,000,000 per gas year should the sulphur content exceed 27 mg/Nm³. Following queries raised by the NAO, Enemalta specified that as at April 2018, there had been no instances when the annual average sulphur content exceeded the stipulated threshold. Enemalta maintained that the Methane Number Credit and the Sulphur Content Credit applied solely to gas delivered to Delimara 3, as the quality of the fuel affected the efficiency and operation of this plant, and not to Delimara 4, given the fact that in the latter case, Enemalta was purchasing electricity from ElectroGas Ltd.

6.3.81 The IA stipulated that in circumstances where an invoice was disputed, a notification was to be made regarding the reason for such dispute, and the amount being disputed. Undisputed amounts and 80 per cent of the disputed amount were still to be settled within the stipulated period. ElectroGas Ltd and Enemalta were to resolve any disputes through amicable negotiation. In circumstances where such attempts failed, the parties were to resolve the payment dispute through the dispute resolution procedure outlined in the IA. Also specified in the IA was that either party had the right to set-off any uncontested amounts owed to against any amounts due by the other party.

6.3.82 Following a meeting held with Enemalta, the NAO was informed that on commissioning of Delimara 4, a dispute arose with respect to the plant's degradation, which affected plant energy availability and heat rate. The latter affects the efficiency of the plant and therefore, the cost of energy delivered. The source of this dispute could be traced to claims by ElectroGas Ltd that the effective operating hours, and therefore degradation, commenced as from March 2017, that is, the date of first operation. On the other hand, Enemalta contended that the effective operating hours started from the date of commercial operation, that is, 10 August 2017, the Energy Delivery Date. In establishing 'Equivalent Operating Hours' one was to sum 'normal operating hours', which term was not defined in the Supply Agreements, hence resulting in the differing interpretations leading to the amounts being contested by Enemalta. Enemalta indicated that the issue was still unresolved and was to be referred to an expert should no agreement about the interpretation of normal operating hours be reached between the parties. Enemalta confirmed that amounts were disputed as from October 2017 and that until such disputes were resolved, 80 per cent of the disputed amounts were being settled by Enemalta as per Clause 13.12.1 of the IA. Enemalta maintained that the disputed amounts were not substantial; however, information provided in this respect indicated a contested amount of approximately €3,000,000. In addition, Enemalta noted that as at May 2018, no invoices had

been disputed on the basis of the verification of the methane number and sulphur content declared by ElectroGas Ltd.

6.3.83 The IA stipulated that, during the Conversion Term, Enemalta was to charge ElectroGas Ltd for the delivery of gas and LNG at the price at which Enemalta had purchased the relevant stock. This price was subject to a capping stipulated in the IA and was based on the quantity of LNG delivered, a commodity multiplier, the Brent price and the exchange rate on the day of the LNG delivery. With respect to the Energy and Gas Conversion Term, the price was calculated through reference to the product of the delivered quantity of LNG and the exchange rate on the day of the LNG delivery multiplied by either the actual gas price per unit of LNG or by the product of the commodity multiplier and the Brent price. During the Energy Conversion Term, the price was to be the exchange rate on the day of the LNG delivery multiplied by the lower of the actual gas price per unit of LNG or the product of the commodity multiplier and the Brent price (Appendix N refers).

6.3.84 The NAO sought to ascertain whether invoices raised by ElectroGas Ltd were in accordance with the provisions of the IA. The Office established that invoices were broadly conformant with the requirements of the IA. Between June 2017 and August 2018, Enemalta payments to ElectroGas Ltd amounted to €223,309,831. Hereunder are the payments effected by Enemalta for energy availability, energy delivery, gas availability and gas delivery (Figure 33 refers).

Figure 33: Enemalta payments, June 2017 – August 2018

Month	Amount (€)
June 2017	8,461,336
July 2017	10,180,551
August 2017	14,735,630
September 2017	16,944,279
October 2017	19,947,403
November 2017	22,648,318
December 2017	18,661,326
January 2018	10,546,171
February 2018	16,186,918
March 2018	15,674,231
April 2018	14,976,750
May 2018	11,712,153
June 2018	9,885,281
July 2018	16,589,831
August 2018	16,159,653
Total	223,309,831

6.3.85 Aside from payments made in respect of energy availability, energy delivery, gas availability and gas delivery, Enemalta also acquired allowances in relation to carbon credits for Delimara 4. Enemalta indicated that it had transferred 434,314 Tons of Allowances to ElectroGas Ltd’s holding account on 16 April 2018. This was carried out on the basis of the amount indicated in

the Delimara 4 Verified Emissions Report relating to 2017. These allowances were purchased by Enemalta in multiple transactions at an average price of €6.84 per ton. The full cost of these allowances amounted to €2,970,708. Enemalta noted that it had confirmed that it would pay for CO₂ emissions subject to certain criteria in clarifications issued to the RfP. According to Enemalta, as at April 2018, the expected amount of emissions was less than the amount indicated in the Delimara 4 Verified Emissions Report, and was expected to be 218,556 tons of CO₂. Enemalta informed ElectroGas Ltd of this and safeguarded its right to recover the Excess Allowances Costs for the difference of 215,758 tons of CO₂ from ElectroGas Ltd, amounting to €1,475,785.

Restrictions on Leasing and Transfers of Shares or Assets

6.3.86 Restrictions on the lease and transfer of assets and shares were imposed on ElectroGas Ltd through the IA. After the final effective date, the initial shareholders of ElectroGas Ltd were to retain their percentage shareholding for at least three years after the Open Cycle Energy Delivery Date as follows:

- a. GEM Holdings Ltd, 30 per cent shareholding;
- b. Socar Trading SA, 20 per cent shareholding;
- c. Siemens Project Ventures GmbH, 20 per cent shareholding; and
- d. Gasol plc, 30 per cent shareholding.

6.3.87 The initial shareholders were to retain such shareholding either directly or through a fully-owned subsidiary. However, specified in the IA were three exceptions to this requirement, that is:

- a. where required by law, court order, tribunal or governmental authority or agency having appropriate jurisdiction;
- b. where Enemalta has provided prior written approval; and
- c. as part of a public offering.

6.3.88 During the aforementioned period, the shareholders could not transfer their ordinary share capital except for certain specified circumstances, namely:

- a. to another initial shareholder;
- b. to an affiliate of any initial shareholder provided that the affiliate remains such until at least three years after the energy delivery date;

- c. where required by law, court order, tribunal or governmental authority or agency having appropriate jurisdiction;
- d. where Enemalta has provided prior written approval; and
- e. as part of a public offering.

6.3.89 The above cited transfers were only permissible provided that the initial shareholders retained ownership of not less than 51 per cent of the ordinary share capital until three years after the Energy Delivery Date. Furthermore, permitted transferees were to conform with other obligations including that aggregate shareholders’ funds were not less than €300,000,000, had a corporate rating of not less than B+ as determined by Standard and Poor’s Rating Group or equivalent, and had not been involved in any arbitration or litigation with Enemalta within the previous 24 months.

Insurance Policies

- 6.3.90 ElectroGas Ltd was to acquire and retain, throughout the term, insurance coverage as required by law and as provided in the IA. In this respect, the IA specified the minimum requirements of the insurance coverage that was to be obtained on or before the effective date. Insurance coverage was to be obtained and maintained as follows:
- a. prior to the Phase 1 Gas Delivery Date in respect of the gas facilities and the Energy Delivery Date in respect of Delimara 4 (Figure 34 refers); and
 - b. as of the Open Cycle Energy Delivery Date and the Energy Delivery Date (Figure 35 refers).

Figure 34: Insurance cover as from the Effective Date

Period	Cover	Sum insured	Insured parties
-	Marine and air cargo (other than FSU)	Freight plus replacement cost of any shipment	ElectroGas Ltd, ElectroGas Ltd contractors and the lenders (parties to the Financing Agreements)
-	Loss of Gas Availability Payments and Energy Availability Payments due to a delay in start-up following a marine or air incident with an indemnity period of six months	Estimated total revenue including but not limited to Energy Availability Payments and Gas Availability Payments	ElectroGas Ltd and the lenders

At least from 14 April 2015 to the Phase 1 Gas Delivery Date (in respect of the gas facility) and the energy delivery date (in respect of Delimara 4), or any later date as may be agreed	Against all risks of physical loss or damage to the contract works executed, as well as the facilities owned by Enemalta and D3 Power Generation Ltd ¹	Total insurable contract price of EPC contracts, plus an additional amount in respect of Enemalta's and D3 Power Generation Ltd's property, equal to a loss limit of €5,000,000	ElectroGas Ltd, ElectroGas Ltd contractors, Enemalta and the lenders
At least from 14 April 2015 to the Phase 1 Gas Delivery Date (in respect of the Gas Facilities) and the energy delivery date (in respect of Delimara 4) or any later date as may be agreed	Against loss of Energy Availability Payments and Gas Availability Payments following delays as a result of damage to the works during construction or testing	An amount equal to the estimated revenue, including but not limited to Energy Availability Payments and Gas Availability Payments	ElectroGas Ltd and the lenders
At least from 14 April 2015 to the Phase 1 Gas Delivery Date (in respect of the Gas Facilities) and the energy delivery date (in respect of Delimara 4) or any later date as may be agreed	Against legal liability to third parties for death, injury or damage to property arising out of the construction, testing and commissioning of the facilities in Malta	€50,000,000 for any one occurrence plus costs and expenses	ElectroGas Ltd, ElectroGas Ltd contractors, Enemalta and the lenders
At least from 14 April 2015 to the Phase 1 Gas Delivery Date (in respect of the Gas Facilities) and the energy delivery date (in respect of Delimara 4) or any later date as may be agreed	Against legal liability to ElectroGas Ltd employees for death or injury arising out of the construction, testing and commissioning of the facilities	€10,000,000 for any one occurrence plus costs and expenses	ElectroGas Ltd

Note:

1. D3 Power Generation Ltd was a private limited liability company, registered on 29 August 2014, whose shareholders were SEP (Malta) Holding Ltd, Enemalta and Malta Government Investments Ltd.

Figure 35: Insurance policies to be taken as of the Open Cycle Energy Delivery Date

Cover	Sum insured	Insured parties
Against all risks of physical loss or damage to fixed assets, including building contents, machinery, stock, fixtures and fittings	Reinstatement Value of the facilities (other than the FSU) ¹	ElectroGas Ltd, Enemalta and the lenders
Against loss of Gas Availability Payments and Energy Availability Payments due to the loss or non-achievement of generation capacity and/or output and any additional costs incurred in minimising damages	An amount equal to the estimated revenue including but not limited to Gas Availability Payments and Energy Availability Payments ¹	ElectroGas Ltd and the lenders
Against legal liability to third parties for death, injury or damage to property arising from the facilities	€50,000,000 for any one occurrence plus costs and expenses ¹	ElectroGas Ltd, ElectroGas Ltd contractors, Enemalta and the lenders
Against legal liability to ElectroGas Ltd employees for death or injury arising out of the construction, testing and commissioning of the facilities	€10,000,000 for any one occurrence plus costs and expenses	ElectroGas Ltd

Note:

1. Sums insured were to be adjusted at the Energy Delivery Date in order to account for the levels of the relevant variables as at that date, and every two years thereafter during the term to account for increases in the relevant variables.

6.3.91 Furthermore, stipulated in the IA was that the FSU was to be covered against own damage risks, liability risks and crew liability risks during storage, supply and bunkering operations, as well as all activities incidental thereto. Policies obtained by ElectroGas Ltd prior to the Phase 1 Gas Delivery Date and the Energy Delivery Date in accordance with the Marine and Cargo and the Contractors’/Erection All Risks policies were to permit the assignment thereof to Enemalta. Similarly, as from the Open Cycle Energy Delivery Date, the policies obtained by ElectroGas Ltd in respect of All Risks Insurance – Fixed Assets were to permit assignment thereof to Enemalta. Also from the Open Cycle Energy Delivery Date, LNG cargo was to be insured during storage and the All Risks Policy referred in Figure 16 was to cover contamination risks to the LNG.

6.3.92 Notwithstanding the above requirements, noted in the IA was that the insurance coverage required could be periodically changed subject to Enemalta’s prior approval, which was not to be unreasonably withheld or delayed. Furthermore, ElectroGas Ltd was excused from acquiring any coverage required should this be unavailable for reasons not attributable to ElectroGas Ltd. In this case, ElectroGas Ltd was to notify Enemalta through an insurance coverage notice. Nonetheless, ElectroGas Ltd was obliged to procure insurance to the extent of the available cover. Following queries by the NAO, Enemalta provided the Office with documentation evidencing the insurance cover acquired by ElectroGas Ltd in conformity with the IA.

Force Majeure

- 6.3.93 The IA also provided for circumstances that could arise in case of a force majeure event. Among others, the Agreement stipulated the procedures applicable after an event of loss, particularly, the determination of commercial viability in relation to the reinstatement, reconstruction, replacement, repair or renewal of the facilities in line with the Supply Agreements. In all cases, insurance proceeds and any other amounts available to ElectroGas Ltd were to first be utilised to settle amounts due to the lenders of ElectroGas Ltd in line with the Financing Agreements. Subsequently thereafter, amounts available were to be utilised for the payment of costs and expenses incurred and associated with the event of loss. Finally, if reinstatement of the facilities were possible, then any available amounts were to be utilised to reinstate, reconstruct, replace, repair or renew the facilities, if this was commercially feasible. The IA provided for the terms regulating remedial measures that were to be undertaken through a reinstatement notice submitted by ElectroGas Ltd to Enemalta, which was to include a programme, works and budget that would permit operation of the facilities on a commercially feasible basis.
- 6.3.94 Should a force majeure event result in the non-achievement of a deadline or milestone under a Transaction Agreement, then such deadline was to be extended by the time lost due to the delay caused by the event. However, no relief was to be granted to ElectroGas Ltd to the extent that the delay would have nevertheless ensued had the force majeure event not occurred.

Adjustments to the End of Term

- 6.3.95 After the Open Cycle Energy Delivery Date and during the Early Gas Period, the LNG Supply Term and/or the Energy and Gas Conversion Term, the term of the IA could be extended in line with certain conditions. The extension essentially served to compensate ElectroGas Ltd for any loss of revenue, or allow Enemalta to recoup overpayments, incurred due to the unavailability of the facilities, attributable to:
- a. a natural force majeure event;
 - b. an uninsurable risk event, such as armed conflict, terrorism, embargoes imposed on Malta, or the closure of harbours, docks and facilities for the use of shipping; or
 - c. an Enemalta force majeure event, understood as:
 - i. an act of prevention or interference by, or any failure of, Enemalta to comply with its obligations under a Transaction Agreement, where such act is due to a force majeure event other than an Enemalta risk event (such as expropriation, nationalisation, import restrictions, closure of harbours, rationing or allocation, asset claim or change in law);
 - ii. any inability of the network to receive and/or take delivery of energy at the Network Connection Point;
 - iii. any inability of Enemalta to receive and/or take delivery of energy at the Delimara 3 Connection Point; and
 - iv. any network fault.

- 6.3.96 Where deemed availability payments were paid by Enemalta after the Open Cycle Energy Delivery Date, the term could be extended by a period where the aggregate cumulative availability payments for such period would equal the aggregate deemed availability payments. Likewise, where deemed availability payments were paid by Enemalta prior to the Open Cycle Energy Delivery Date, the term could be shortened by a period where the aggregate cumulative availability payments for such period would equal the aggregate deemed availability payments.
- 6.3.97 Provisions for the disbursement of a budget incentive payment to be paid by Enemalta to ElectroGas Ltd, and a budget liquidated damage payment to be paid by ElectroGas Ltd to Enemalta, depending on the level of O&M costs incurred due to an extended term arising from a force majeure event were set out in the IA. A capping of these payments was also stipulated in the Agreement. As at April 2018, no adjustments to the end of term had been made.

Material Changes

- 6.3.98 The IA regulated the consideration of material changes, adverse or beneficial, to revenues and costs with an annual aggregate effect of at least €25,000 in any one year. If the material changes were beyond the control of Enemalta or due to an additional contract stock notice, then ElectroGas Ltd was obligated to minimise the adverse consequences and maximise the advantageous ones. Specified were the entitlements due to Enemalta and ElectroGas Ltd were such circumstances to materialise, which entitlements were contingent on when they occurred. It was also required to mitigate any adverse effects on the project from a change in law. Essentially, the provisions were intended to nullify the effect of such changes on the parties.
- 6.3.99 Also outlined in the IA was the procedure to be adhered to should, following the fifth anniversary of the Energy Delivery Date, a material adverse change in LNG pricing and/or power market conditions occur that did not allow either Enemalta or ElectroGas Ltd to attain a commercial benefit from the project. In this case, Enemalta and ElectroGas Ltd were to seek agreement on the continued viability of the project, including the possibility of termination of the Transaction Agreements.
- 6.3.100 According to the IA, where an applicable standard changed after 19 December 2014, ElectroGas Ltd was not required to comply with the changed standard, save where this was law or when given notice by Enemalta. Further specified was that, should ElectroGas Ltd be unable to attain the Phase 2 Gas Delivery Date by its scheduled gas delivery date due to an inability of Delimara 3 to receive gas, then ElectroGas Ltd was entitled to reimbursement of additional costs reasonably incurred as a result of the delay. As at April 2018, no material changes had been registered.

Performance Guarantee and Enemalta Letter of Credit

6.3.101 The IA stipulated each party's obligations in terms of financial guarantees. ElectroGas Ltd was to provide a performance guarantee in favour of Enemalta, while Enemalta was to procure a letter of credit in favour of ElectroGas Ltd. Specifications and template forms for both documents were stipulated in the IA.

6.3.102 The performance guarantee, in favour of Enemalta, was to be for €5,000,000 and valid for a minimum of 12 months. Furthermore, it was to be maintained from one month before the earlier of the Scheduled Phase 1 Gas Delivery Date or the Scheduled Open Cycle Energy Delivery Date until 180 days following the Energy Delivery Date. The performance guarantee was to be issued by a bank with an approved credit rating of BBB+. Enemalta was entitled to call on the performance guarantee should ElectroGas Ltd fail to pay any liquidated damages or any other amounts owed to it under any of the Transaction Agreements when due. Should ElectroGas Ltd subsequently provide a replacement performance guarantee, Enemalta was to return the proceeds of the performance guarantee called less any amounts due to Enemalta. The guarantee was to be replenished to its full amount within 30 days from when called, provided that the aggregate amount replenished did not exceed €13,000,000.

6.3.103 The Enemalta letter of credit was also to be issued by a bank holding an approved credit rating of BBB+. Similar to the performance guarantee, the Enemalta letter of credit constituted an on demand, unconditional and irrevocable commitment to pay by the bank by which it was issued. Enemalta was to procure the letter of credit from the date on which ElectroGas Ltd provided written notice to Enemalta to this effect. On and from this date, Enemalta was to provide a letter of credit valid for a minimum of twelve months and maintained for the duration of the term. The letter of credit was to be for an amount equal to €35,000,000 prior to the GSA Exit Date and €27,000,000 on or after this date. Similar to the conditions set for the performance guarantee, the letter of credit could be called on should:

- a. Enemalta not pay an amount owed to ElectroGas Ltd in accordance with the Transaction Agreements by the due date;
- b. it expire on a date prior to the end of the term within which it should have been in force; or
- c. the issuing bank's approved credit rating fall below the required rating.

In the latter two cases, if Enemalta replaced the letter of credit, ElectroGas Ltd was to return the proceeds called less any unpaid amounts due but retaining interest earned. The guarantee was to be replenished in full within 30 days from when called.

6.3.104 The NAO enquired with Enemalta whether the requisite performance guarantee was obtained by ElectroGas Ltd in accordance with the terms of the IA. To this end, Enemalta forwarded

correspondence issued by the BoV specifying that the Bank was guaranteeing €5,000,000 in favour of Enemalta on 12 December 2017. This performance guarantee, which was to expire on the earlier of either 12 February 2018 (that is, 186 days following the achievement of the Energy Delivery Date) or the return of the original guarantee document to BoV accompanied by Enemalta's instructions to cancel, related to the last period that was to be covered. Enemalta confirmed that the performance guarantee had not been called at any point in time.

6.3.105 With respect to the letter of credit, in submissions made to this Office, Enemalta noted that it was to issue the letter of credit in favour of ElectroGas Ltd if the latter submitted a written request following a delayed payment event, that is, a date on which Enemalta had, on more than one occasion in the prior 12 months, failed to pay any invoiced amount due to ElectroGas Ltd within 14 days of its due date. Since there was no delayed payment event, as at April 2018, Enemalta confirmed that no letter of credit had been issued.

Termination of the IA and Consequences Thereof

6.3.106 Enemalta and ElectroGas Ltd were entitled to terminate the Project Agreements by serving the other party with a termination notice. Acknowledging the importance of the provision of electricity and gas to the security of supply in Malta, ElectroGas Ltd was to notify Government of its intention to terminate the IA or any of the Supply Agreements, as may be agreed in the SSA.

6.3.107 Enemalta was entitled to terminate the Project Agreements after the Effective Date on occurrence of any of the following, save for a breach by Enemalta of a Transaction Agreement or in connection with a force majeure event:

- a. insolvency of ElectroGas Ltd;
- b. breach by ElectroGas Ltd of any of its material obligations under the IA or any of the Project Agreements or the Site Lease Deed, which remains unaddressed for 30 days from notice by Enemalta;
- c. failure by ElectroGas Ltd to provide a performance bank guarantee to Enemalta on or before the final effective date, or to maintain such guarantee in accordance with the IA;
- d. abandonment by ElectroGas Ltd, whereby it would have ceased to perform its obligations as defined in the IA;
- e. assignment or transfer by ElectroGas Ltd of its rights or obligations pursuant to a Supply Agreement in breach of the provisions thereof, subject to the Direct Agreements;
- f. default by ElectroGas Ltd pursuant to the Site Lease Deed or disconnection pursuant to the Electricity Connection Agreement;

- g. failure by ElectroGas Ltd to pay any amount due under the Transaction Agreements, where such failure continues for a period of more than 10 days after notice of breach by Enemalta;
- h. failure by ElectroGas Ltd to achieve key milestones of the PPA and the GSA by the stipulated timeframes, save where such failures are remedied prior to the termination date;
- i. failure by ElectroGas Ltd to maintain the Delimara 4 Average Availability and the Gas Facilities Average Availability equal to or greater than the minimum average availability for both, except to the extent agreed otherwise by the parties in the Conversion Term Agreement;
- j. failure by ElectroGas Ltd to execute and deliver to Enemalta any documents that may be necessary for the transfer of the gas facilities or to hand over possession of the relevant premises to Enemalta; and
- k. environmental failure or breach of the environmental permit by ElectroGas Ltd, which adversely and substantially affects the availability of Delimara 4 for more than three months.

6.3.108 On the other hand, ElectroGas Ltd was entitled to terminate the Project Agreements by serving a termination notice on Enemalta on occurrence of any of the following after the Effective Date, save for a breach by ElectroGas Ltd of a Transaction Agreement or in connection with a force majeure event:

- a. insolvency of Enemalta;
- b. failure by Enemalta to pay any amount due under the Transaction Agreements, where such failure continues for a period of more than 10 days after notice of breach by ElectroGas Ltd;
- c. breach by Enemalta of any of its material obligations under the IA or any of the Project Agreements or the Site Lease Deed, which remains unaddressed for 30 days from notice by ElectroGas Ltd;
- d. expropriation, requisition, confiscation, nationalisation by the Government or Enemalta of all or a substantial part of the assets of or shares in ElectroGas Ltd, any Transaction Agreement, material approval, or any material provision thereof;
- e. failure by Enemalta Ltd to provide a letter of credit to ElectroGas Ltd and/or maintain the letter of credit, with such failure not remedied within 10 days of written notice by ElectroGas Ltd; and
- f. assignment or transfer by Enemalta of its rights or obligations pursuant to a Supply Agreement in breach of the provisions thereof.

6.3.109 The IA included further provisions that would allow Enemalta and ElectroGas Ltd to terminate the Project Agreements due to consequences resulting from force majeure events and natural force majeure events, which caused damage to the facilities rendering them unfit for normal operation for a considerable period. In such cases, a termination notice was to be served specifying a period, the expiry of which would terminate the Project Agreements unless remedial action had been agreed to.

6.3.110 Enemalta was entitled to terminate the Project Agreements at any date following 14 months from the Schedule Start Date for convenience and without cause. To this end, Enemalta was to serve ElectroGas Ltd with a termination notice giving 30 days notice.

6.3.111 In addition, Enemalta was entitled but not obligated to terminate the Project Agreements if ElectroGas Ltd failed to obtain the required insurance cover where:

- a. such unavailability of insurance was not attributable to Enemalta; and
- b. the unavailability of insurance arose from an inconsistency in terms of the required coverage.

6.3.112 The IA also stipulated the consequences of termination in different scenarios (Figure 36 refers).

Figure 36: Termination scenarios and consequences thereof

Termination scenario	Party terminating	Consequences
Prior to financial closing	Enemalta	No liability to either party (unless otherwise agreed to in writing between the parties).
Prior to the final effective date	Either party	No liability to either party (unless otherwise agreed to in writing between the parties).
In instances of default by ElectroGas Ltd after the final effective date	Enemalta	Enemalta may elect to acquire the facilities and pay ElectroGas Ltd the ElectroGas Ltd Default Termination Value, together with other amounts due.
In instances of default by Enemalta after the final effective date	ElectroGas Ltd	ElectroGas Ltd may transfer the facilities to Enemalta on payment by the latter of the Enemalta Default Fair Value, together with any other amounts due. In case of termination after the Final Effective Date, Enemalta was to acquire the facilities on payment of the entire Enemalta Default Fair Value and other amounts due.
For convenience before/after the final effective date	Enemalta	ElectroGas Ltd may transfer the facilities to Enemalta on payment by the latter of the Enemalta Default Fair Value, together with any other amounts due.

For a prolonged force majeure event or uninsurable event after the final effective date	Enemalta	ElectroGas Ltd may elect to transfer the facilities to Enemalta on payment by the latter of the Enemalta Force Majeure Fair Value, if the force majeure event is not an Enemalta risk event.
For a prolonged Enemalta risk event after the final effective date	ElectroGas Ltd	Enemalta was to pay ElectroGas Ltd the Enemalta Default Fair Value, together with any other amounts due and acquire the facilities.
For a prolonged natural force majeure event after the final effective date	ElectroGas Ltd	ElectroGas Ltd may elect to transfer the facilities to Enemalta subject that written notice to this effect is given to Enemalta. If ElectroGas Ltd gives notice, then Enemalta was to pay the ElectroGas Ltd Force Majeure Fair Value, together with any other amounts due. If requested by Enemalta, ElectroGas Ltd was to simultaneously transfer its rights and obligations pursuant to the EPC contract(s), the Interface Agreement, the Construction Management and Interface Agreement ²³ , the O&M Contract(s), its LNG Supply Agreements, the FSU Conversion and Charter Agreement and/or the FSU O&M Agreement. This condition was to be satisfied by ElectroGas Ltd through the execution of the relevant Enemalta direct agreement.
After the final effective date, due to a natural force majeure event that damaged the facilities, rendering them unfit for normal operation	Enemalta/ ElectroGas Ltd	No further obligation or liability to either party.

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²³ The Construction Management and Interface Agreement was entered into between ElectroGas Ltd, URS Infrastructure and Environment UK Ltd on 12 December 2014. According to Enemalta, this was intended to manage the construction aspect of the project in relation to the EPC contracts. Enemalta was not privy to this Agreement since it was not a party to the Agreement. Enemalta noted that it was in its interest that this Agreement be assigned to it should certain circumstances arise prior to completion of the construction of the project so that the project could proceed regardless.

Transfer on invalidity or termination of the Site Lease Deed after the final effective date	Enemalta/ ElectroGas Ltd	ElectroGas Ltd may elect to transfer the facilities to Enemalta. Compensation was to be paid by Enemalta, depending on the reason for termination. The IA made reference to the payment of the Enemalta Default Fair Value, the Enemalta Force Majeure Fair Value, the ElectroGas Ltd Default Termination Value, the ElectroGas Ltd Force Majeure Fair Value or the Residual Sale Option Fair Value, together with any other amounts due to ElectroGas Ltd, depending on the context of termination.
Expiry of the Supply Agreements	-	ElectroGas Ltd may elect to sell the facilities to Enemalta on expiry of the term. Enemalta was to pay ElectroGas Ltd the Sale Option Fair Value, together with any other amounts due. Enemalta was to acquire the facilities on payment of the amounts due.

6.3.113 The payments referred to in Figure 36 are defined as follows:

- a. ElectroGas Ltd Default Termination Value - The termination payment was to comprise the sum of:
 - i. the amounts due to lenders under the Financing Agreements; and
 - ii. an amount equal to the liability of ElectroGas Ltd to pay taxes excluding those unpaid by the due date according to law;
 and the reduction from this total of positive amounts of:
 - iii. credit balances on any bank accounts held by or on behalf of ElectroGas Ltd, excluding credit balances for retained profits intended for distribution and the value of any right of ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued;
 - iv. all amounts payable by the lenders to ElectroGas Ltd in view of the termination of hedging agreements resulting from the prepayment of amounts outstanding under the Financing Agreements; and
 - v. amounts paid by ElectroGas Ltd to its shareholders or their affiliates during the period between the termination date and the calculation date as specified in the IA.
- b. Enemalta Default Fair Value - This payment was to comprise the sum of:
 - i. the amounts due to lenders under the Financing Agreements, or in the event of termination by Enemalta for convenience prior to the Final Effective Date, the amount due would be zero;
 - ii. an amount equal to the Enemalta Default Equity Compensation, which consisted of:
 - the equity invested and compensation amount after the Final Effective Date but prior to the Open Cycle Energy Delivery Date; and
 - the compensation amount plus all credit balances held by or on behalf of ElectroGas

Ltd, excluding retained profits intended for distribution after the Open Cycle Energy Delivery Date;

in each case, less:

- the reinstatement cost;
- the FSU charter credit plus the FSU variations credit calculated as at the termination date; and
- amounts owed to Enemalta by ElectroGas Ltd under any Project Agreement; provided that the Enemalta Default Equity Compensation is not negative;

- iii. all amounts payable to the contractors directly resulting from early termination of their agreements due to the early termination of the Transaction Agreements or the occurrence of the GSA Exit Date; and
- iv. an amount equal to the redundancy payments for the employees of ElectroGas Ltd, if any;

and the reduction from these amounts, if positive and if termination occurs after the Final Effective Date, of:

- v. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd excluding any credit balance in respect of retained profits intended for distribution and the value of any right to ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued; and
- vi. all amounts payable by the lenders to ElectroGas Ltd in view of the termination of hedging agreements resulting from the prepayment of amounts outstanding under the Financing Agreements.

c. Enemalta Force Majeure Fair Value - This payment was to comprise the sum of:

- i. the amounts due to lenders under the Financing Agreements;
- ii. an amount equal to the Enemalta Force Majeure Equity Compensation as defined in the IA;
- iii. all amounts payable to the contractors directly resulting from early termination of their agreements due to the early termination of the Transaction Agreements or the occurrence of the GSA Exit Date; and
- iv. an amount equal to the redundancy payments for the employees of ElectroGas Ltd, if any;

and the reduction from these amounts, if positive, of:

- v. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd, excluding any credit balances in respect of retained profits intended for distribution and the value of any right to ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued; and
- vi. all amounts payable by the lenders to ElectroGas Ltd in view of the termination of hedging agreements resulting from the prepayment of amounts outstanding under the Financing Agreements.

- d. ElectroGas Ltd Force Majeure Fair Value - This payment was to comprise the sum of:
 - i. the amounts due to lenders under the Financing Agreements;
 - ii. an amount equal to the ElectroGas Ltd Force Majeure Equity Compensation as defined in the IA;
 and the reduction from these amounts, if positive, of:
 - iii. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd, excluding any credit balances in respect of retained profits intended for distribution and the value of any right to ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued; and
 - iv. all amounts payable by the lenders to ElectroGas Ltd in view of the termination of hedging agreements resulting from the prepayment of amounts outstanding under the Financing Agreements.
- e. The Residual Sale Option Fair Value is based on the fair value of the sale, that is, €35,000,000 prior to the GSA Exit Date and €27,000,000 on or after the GSA Exit Date, less the costs incurred to reinstate the facilities, depreciated on a straight line basis between the expiry of the term and the date of expiry of the Site Lease Deed.
- f. The Sale Option Fair Value is equivalent to €35,000,000 prior to the GSA Exit Date and €27,000,000 on or after the GSA Exit Date, less the costs incurred to reinstate the facilities.

6.3.114 In determining the lenders debt for the purposes of the ElectroGas Ltd Default Termination Value, the ElectroGas Ltd Force Majeure Fair Value, the Enemalta Force Majeure Fair Value and the Enemalta Default Fair Value, the IA set the maximum amount of aggregate principal as €380,000,000 on or prior to the Energy Delivery Date. This was to be amortised after the Energy Delivery Date, in line with the IA.

6.3.115 The compensation amount referred to in establishing the Enemalta Default Fair Value was contingent on when termination occurred. For termination on or prior to the Open Cycle Energy Delivery Date, the compensation amount was €57,749,000 for termination during the first 12 months following the Effective Date and €64,312,000 for termination occurring after the first 12 months following the Effective Date yet prior to the Open Cycle Energy Delivery Date. Compensation amounts for termination after the Open Cycle Energy Delivery Date were to be determined annually from this date, according to when termination occurred, and were to be based on the value of future cash flows and the discounted Sale Option Fair Value less applicable deductions. In this manner, the compensation amount at the end of the term was to be equal to €34,806,000, or €27,004,000 if the GSA Exit Date had occurred (Appendix O refers).

6.3.116 Aside from the above termination scenarios, Enemalta could also terminate the GSA five years after the LNG Supply Term Commencement Date. Given that the LNG Supply Term Commencement date was established as 14 April 2017, that is, 24 months after the Schedule Start Date, then the First Reference GSA Exit Date was determined as 14 April 2022. If Enemalta exercised its option to terminate the GSA, notice was to be given to ElectroGas Ltd in line with the deadlines stipulated in the IA. Two scenarios were considered, namely:

- a. for a GSA Exit Date on the First Reference GSA Exit Date (14 April 2022), by providing notice to ElectroGas Ltd prior to 20 June 2015; or
- b. for a GSA Exit Date on or after the Second Reference GSA Exit Date (14 August 2026), by providing notice to ElectroGas Ltd at any time prior to eight years from the LNG Supply Term Commencement Date.

Enemalta confirmed that, as at May 2018, it had not given a GSA Exit Notice to ElectroGas Ltd.

6.3.117 Enemalta could also opt for an Accelerated GSA Exit, similarly possible under two scenarios, namely:

- a. subject to written notice being provided to ElectroGas Ltd for a GSA Exit Date between the First and the Second Reference GSA Exit Dates; or
- b. subject to written notice being provided to ElectroGas Ltd for a GSA Exit Date after the revised First Reference GSA Exit Date, shortened to as early as 14 April 2019.

6.3.118 In case of an Accelerated GSA Exit, ElectroGas Ltd was to transfer its rights and obligations pursuant to the LNG SPA with Socar Trading SA on the GSA Exit Date to Enemalta, who was to reimburse all costs, losses and expenses incurred by ElectroGas Ltd in accordance with the STSA LNG SPA after the GSA Exit Date pending such transfer. Enemalta and ElectroGas Ltd were to cooperate, at least from two years prior the GSA Exit or the Accelerated GSA Exit, in relation to matters such as the physical handover of the facilities, metering and quality testing.

6.3.119 If the GSA Exit option was availed of, Enemalta was to acquire the gas facilities against payment of the GSA Exit Value to ElectroGas Ltd. This payment was to consist of the sum of:

- a. the GSA Exit Price, which was to be based on the applicable Reference GSA Exit Dates and a discounted Sale Option Fair Value, less the summation of reinstatement costs for the gas facilities and the FSU Charter Credit (Appendix P refers). The latter was to be established according to the relativity of the termination date to the Second Reference GSA Exit Date and was to be zero in case of an Accelerated GSA Exit. The aggregate sum of the reinstatement costs and the FSU Charter Credit could not exceed 40 per cent of the GSA Exit Price or a lesser percentage determined in accordance with the IA;
- b. amounts due by ElectroGas Ltd to its lenders arising as a result of the GSA Exit;
- c. amounts payable to the contractors directly resulting from the occurrence of the GSA Exit, save for costs that related to LNG suppliers and LNG supply agreements;
- d. an amount equal to the redundancy payments for the employees of ElectroGas Ltd, arising as a result of the GSA Exit, if any; and

- e. if executed through an Accelerated GSA Exit, contractors' costs relating to LNG suppliers and LNG supply agreements;
- f. less, to the extent that it is a positive amount, the aggregate of amounts payable by counterparties to the interest rate or exchange rate hedging agreements included in the Financing Agreements, arising from the GSA Exit, and as a result of prepayments of outstanding amounts under the Financing Agreements.

6.3.120 On receipt of the GSA Exit Value payment, ElectroGas Ltd was to apply an amount determined with its lenders, equal to at least 60 per cent of the GSA Exit Price, in prepayment of the principal amount of lenders' debt outstanding as at the GSA Exit Date. On payment, ElectroGas Ltd was to transfer the gas facilities and relinquish the sites leased through the Site Lease Deed to Enemalta.

6.3.121 ElectroGas Ltd was to reimburse Enemalta the reinstatement costs not deducted from the GSA Exit price as at the GSA Exit Date, subject to the terms of the Supply Agreements Direct Agreement. Specified in the IA was that Enemalta and ElectroGas Ltd were to commence negotiations on the Supply Agreements Direct Agreement by not later than four months after the Effective Date or as agreed by the parties. This Agreement was entered into on 14 December 2017.

Transfer Procedure and Payment Terms

6.3.122 The IA provided details regarding the transfer procedure of the facilities (Delimara 4 and the gas facilities) or the gas facilities to Enemalta and the payment terms. Specified were the documents, items and equipment to be transferred by ElectroGas Ltd to Enemalta, as well as other rights and obligations if requested by Enemalta, such as insurance policies and intellectual property rights necessary for the operation and maintenance of the facilities. Also noted were Enemalta's obligations with respect to the transfer or sale of and payment for LNG stocks, which were contingent on the basis of termination. However, ElectroGas Ltd was not obligated to transfer ownership of the FSU to Enemalta. Notwithstanding this, if ElectroGas Ltd became entitled to acquire ownership of the FSU in accordance with the FSU Conversion and Charter Agreement, ElectroGas Ltd was to notify Enemalta and indicate the applicable purchase price, terms and conditions. Subsequently, Enemalta could direct ElectroGas Ltd to acquire the FSU, subject to the provision of the required funds. Ownership of the FSU was to be transferred to Enemalta on the same terms on which ElectroGas Ltd acquired ownership, without any further payment being due by Enemalta to ElectroGas Ltd.

6.3.123 ElectroGas Ltd retained responsibility to maintain the facilities during the period of transfer, that is, from the termination date to the actual date of transfer. However, Enemalta was to reimburse ElectroGas Ltd for the maintenance to the facilities and the purchase of insurance during this period. Moreover, Enemalta was to indemnify ElectroGas Ltd against all expenses, losses, costs and damages caused by an uninsurable risk event or an Enemalta risk event throughout the period of transfer.

6.3.124 Specified in the IA was the consideration of insurance proceeds pending transfer and the risk of loss during this period. Enemalta was to assume the risk of loss of and/or damage to the facilities from the date of transfer, while ElectroGas Ltd was to assume such risk prior to this date. However, if the termination was instigated by Enemalta for convenience and without cause, then Enemalta was to assume the risk of loss from the termination date.

6.3.125 Further noted in the IA was that ElectroGas Ltd could suffer damages that were difficult or impossible to determine if the Transaction Agreements were terminated after the Final Effective Date due to a breach by Enemalta or a force majeure event. In such case, Enemalta and ElectroGas Ltd agreed that the options and compensation for the transfer of the facilities to Enemalta as provided in the IA were to constitute liquidated damages to ElectroGas Ltd for such termination and that these were to be the sole and exclusive remedy of ElectroGas Ltd should such a termination take place. In case of Enemalta suffering loss and/or damages on termination following the final effective date, such a termination was to be without prejudice to any rights or remedies Enemalta had in accordance with the law and other provisions of the IA.

Other Requirements

6.3.126 The IA also included a number of confidentiality provisions. Enemalta and ElectroGas Ltd were to treat all information and data in connection with the Transaction Agreements disclosed to them by the other party as confidential and were to use such confidential information only in connection with the project. However, the IA listed a number of exceptions wherein confidential information could be disclosed to, for instance, regulatory authorities, lenders, potential lenders and also in cases where this was required in order to comply with a legal obligation or if required by a court, arbitrator, administrative tribunal or expert. Specific provisions allowed for disclosure of confidential information by Enemalta to the Government and any entity controlled by the Government, the House of Representatives and/or any parliamentary committee and as could be necessary to enable Enemalta to operate the network and carry out its obligations thereto.

6.3.127 Furthermore, the IA provided restrictions on the assignment and novation of the rights and obligations under the Agreement held by Enemalta and ElectroGas Ltd. ElectroGas Ltd could assign, transfer and/or novate its rights and/or obligations under the IA to the lenders or their agent or trustee (together with the assignment of all the Supply Agreements) for the purpose of providing and enforcing security under the Financing Agreements. Enemalta was entitled to assign and novate its entire rights and obligations pursuant to the Supply Agreements to a third party on the fulfilment of a number of conditions, among which the entry into agreements substituting the third party for Enemalta in the Supply Agreements, the SSA and the Supply Agreements Direct Agreement. Furthermore, ElectroGas Ltd, the Government, the assignee and the lenders were to have entered into an acknowledgement and consent substantially in the agreed form. In addition, Enemalta was entitled to enter into any agreement with a third party for the provision of electricity and/or gas procured from ElectroGas Ltd.

6.3.128 Also contemplated in the IA were provisions relating to the application of relevant indices, the waiver of rights and cumulative remedies, the relationship of the parties and severance. In addition, specified were the regulation of amendments made to the Transaction Agreements, the survival of obligations, third party rights and notices.

6.3.129 The IA provided dispute resolution procedures to be adhered to in the event of any controversy, disagreement or dispute between the parties in the performance, interpretation or application of the Agreement. Where the Agreement provided for expert determination in relation to any matter, neither party was entitled to refer the dispute to arbitration. An expert’s decision was final and binding on the parties. Nonetheless, the IA provided that either party could refer the subject matter of the expert’s decision to arbitration. In this case, notice was to be given to the other party within 30 days of the expert’s decision. If referred to arbitration, the decision of the expert was to be considered final and binding pending any arbitral award to the contrary.

6.3.130 Additionally, the IA included provisions relating to arbitration. It was noted that any arbitration between the parties was to be held and settled in Malta, and was to be conducted in accordance with the rules of the International Chamber of Commerce in force when the arbitration began. An arbitral tribunal was to be composed of three arbitrators. Each of the parties was to nominate an arbitrator and the two nominated arbitrators were to jointly propose the third, who was to be Chair. The award of the arbitral tribunal was to be final and binding on the parties.

6.4 Comparison of the Draft and Final Supply Agreements

6.4.1 The NAO compared the draft Supply Agreements appended to the RfP with those ultimately entered into by Enemalta with ElectroGas Ltd. As expected, the final Agreements included significantly more detail than the corresponding draft Agreements. However, this analysis was undertaken to identify the possible introduction of new concepts, the deletion of existing clauses, or any substantial departures that significantly altered the contractual framework circulated among all bidders. This Office analysed the most salient changes in respect of the PPA, the GSA and the IA, which Agreements were deemed integral to the project. The NAO also reviewed the Shared Responsibility Agreement, which regulated certain interactions between the PPA and the GSA. The Shared Responsibility Agreement was not entered into by the Parties but was assimilated in the other Agreements reviewed.

6.4.2 While the majority of changes related to specific Agreements, which are addressed in the ensuing paragraphs, other changes were common to all the Agreements. For instance, the draft Agreements did not feature the concepts of uninsurable risk events, Enemalta risk events or relief events, save for the inclusion of the concept of an Enemalta event of default. Nonetheless, these changes were considered to be of secondary importance by the NAO and are not further reported on.

Chapter 6

Comparison of the draft PPA to the final Agreements

6.4.3 Significant changes were made to the draft PPA during post-award negotiations. New concepts identified by the NAO in the final PPA included:

- a. The operation of plant in open cycle mode. In the draft PPA, the milestone relating to the open cycle energy delivery date was not considered, but only referral to the energy delivery date was made. In fact, according to the draft PPA, the Scheduled Energy Delivery Date was to be 18 months from the day being four weeks following the issue of a development permit, while in the final PPA, the Scheduled Energy Delivery Date was to be 24 months from the Schedule Start Date, that is, 14 April 2017. The Scheduled Open Cycle Energy Delivery Date was to have occurred on the date being 18 months from the Schedule Start Date, therefore 14 October 2016.
- b. The introduction of deemed and last dates for the open cycle, as well as performance and delay liquidated damages in respect thereof. As a result of the distinction between the open and combined cycle, the final PPA included the concept of tendered open cycle energy availability.
- c. Provisions regarding Energy Availability Payments during testing and commissioning. The final PPA specifically excluded any obligation on Enemalta to effect Energy Availability Payments during the testing and commissioning of the gas turbine generators prior to their respective open cycle acceptance dates and the steam turbine generator prior to the energy delivery date. During testing and commissioning, Enemalta was to pay the Commissioning Energy Delivery Payment.
- d. The distinction between cold, warm and hot starts. In this respect, the calculation for starts in the final PPA featured different prices for base start charges depending on whether the start was cold, warm or hot.
- e. The concept of a gas turbine generator average availability for each gas turbine generator.

6.4.4 The NAO also noted the deletion of clauses originally featuring in the draft PPA, yet not forming part of the final Agreements. These included:

- a. Provisions regarding energy availability payments during contract outages. The draft PPA specified that during the occurrence of a contract outage, the facility was to be deemed to be available and the SPC was entitled to receive energy availability payments from Enemalta on the basis of the guaranteed energy availability applicable to that contract year.
- b. Reference to the calculation of energy payments, wherein Enemalta and the SPC were to take into account implied fuel costs associated with baseload generation.

- c. Aspects related to invoicing. According to the draft PPA, prior to the Energy Delivery Date, the SPC was entitled to submit an invoice to Enemalta for the commissioning energy payment accrued during such month, less any delay liquidated damages payable to Enemalta, within 10 days of the end of a month during which the SPC generated energy in the commissioning of Delimara 4. This provision also applied during the performance of acceptance tests. Enemalta was to settle any invoices in this respect within 60 days of receipt.
- d. The consideration of separate generating units. The draft PPA included a provision stating that when Delimara 4 consisted of more than one generating unit which could be dispatched independently from others, and Enemalta and the SPC so agreed, each such unit was to be treated as a separate facility for the purposes of dispatch, testing, operating parameters and performance measurement.
- e. A clause regarding the consideration of demonstrated energy availability. In the draft PPA, it was noted that if Delimara 4 had received a dispatch instruction to operate for a complete hour and the metered energy availability of Delimara 4 for that hour was less than the hourly average MW dispatch instruction, then the Demonstrated Energy Availability was to be deemed to be the average metered energy availability of Delimara 4 in that hour.

6.4.5 Other differences between the draft PPA and the final Agreements comprised changes to existing conditions. These included:

- a. Amendments relating to the consideration of take or pay obligations. In the draft PPA, the quantity of take or pay was to be of net electrical output and was to be 85 per cent of the annual contract power, that is, the net electrical output expected to be dispatched and delivered less forced outages, applicable during that period or year. Reductions to the take or pay obligation were permissible for all quantities of net electrical output actually taken by Enemalta during such period or year, and all dispatch instructions for net electrical output not delivered for any reason, including any force majeure event affecting ElectroGas Ltd and/or Enemalta. Specified in the final IA was that during the LNG Supply Term, the Enemalta contract quantity consisted of the contract volume and any upward revisions effected by Enemalta. This implied that the 85 per cent limitation no longer applied to the determination of the take or pay quantity. Furthermore, the take or pay obligation was subject to reductions in terms of various provisions relating to quantities of gas taken by Enemalta, nominated yet not delivered by ElectroGas Ltd and instances of non-conforming gas supplied, among other scenarios (paragraph 6.3.53 refers). The interchangeability of gas with annual contract power in accounting for Enemalta's take or pay obligations represented a significant change.
- b. A change in the method of calculation of the adjustment factor, a component of the Energy Availability Payment. In the final PPA, the formula for the adjustment factor was:

$$S_H = \left(1 - \frac{F_H}{40,000}\right)$$

with F_H being the number of m³ shortfall in the Actual Contract Stock below the Contract Stock Requirement during Hour H, without counting the shortfall in any Hour where the Contract Stock Shortfall was due to an Enemalta Risk Event, an Uninsurable Risk Event or a Relief Event, or a Natural Force Majeure Event affecting the facilities. However, in the draft PPA, the formula for the adjustment factor was:

$$S_H = \left(1 - \frac{2 \cdot F_H}{10}\right)$$

with F_H being the number of guaranteed electricity days shortfall in the Contract Fuel Stock below ten during an hour.

- c. An adjustment in the calculation of the Energy Delivery Payment. According to the draft PPA, the Energy Delivery Payment was to be based on the net electrical output aggregated for the hours in the billing period. Imported electricity was only factored in the final PPA.
- d. A revision to the hourly weightings that were to be applied. The NAO noted that in the final PPA, the ratio between the highest and lowest hourly availability weight values was not to exceed six (paragraph 6.1.31 refers). In the draft PPA, this ratio was set at ten.
- e. Matters relating to the treatment of make up power. In the draft PPA, make up power was to be taken after Enemalta had availed of net electrical output at least equal to the take or pay obligation. Noted in the draft PPA was that make up power was to be priced on the basis of the prevailing gas price at the time it was taken by Enemalta, and there was to be a payment from Enemalta to the SPC, or vice-versa as appropriate, to account for any differences between the prevailing gas price at the time that the make up power was recovered and the prevailing gas price when the earliest part of the cumulative annual power deficiency was the subject of the annual power deficiency payment. Furthermore, if Enemalta failed to take any quantity of cumulative annual power deficiency outstanding by way of make up power by the end of the operating period, then the SPC was to cease to have any obligation to pay Enemalta any amount as a refund or rebate with respect to the value of the quantity of make up power not taken. In the final IA, Enemalta was not liable to pay the Energy Delivery Payment in respect of Enemalta Make Up Gas (which effectively assimilated make up power), whether taken as gas or net electrical output.
- f. A change in the duration of the reliability test of the plant. In the draft PPA, a continuous 72-hour period of testing, to be followed by a 30 day reliability run under a variety of compliant dispatch instructions, was required. Meanwhile, in the final PPA, this reliability run was reduced to nine days.

- g. Amendments to provisions regarding metering. According to the draft PPA, Enemalta was to have the right at any time, following reasonable notice to the SPC, to either audit and inspect, or to procure an independent audit and inspection of any operational metering at the facility. However, the final PPA included provisions in relation to the metering of output that were not included in the draft PPA, such as the calibration of electricity meters, their testing and connection, data transmission, and the recording of data by the fiscal energy monitoring system.
- h. Changes to the payment terms. The final IA stipulated that Enemalta was to pay ElectroGas Ltd the amount of each invoice within 30 days from receipt. In the draft PPA, payment was to be effected within 60 days.
- i. An amendment to contract stock requirements. In the draft PPA, the SPC was to provide and maintain a stock of fuel that was not to be less than 10 guaranteed electricity days. The modality of measurement was revised in the final IA, with minimum contract stock requirements ranging from 4,000m³ to 20,000m³ depending on milestones achieved, aggregating in a cumulative manner.
- j. Revisions to the provisions regulating disputed payments. Noted in the draft PPA was that if the parties failed to resolve a dispute regarding an invoice within 30 days of the date on which the notice was served, either party was entitled to refer the dispute to an expert. The draft PPA stated that the disputing party was only required to pay any undisputed amount of such payment on the due date. However, the IA stipulated that undisputed amounts and 80 per cent of any disputed amount were to be settled within the stipulated period. Furthermore, according to the IA, the period within which parties could resolve a dispute regarding an invoice was reduced to 10 days from when notice was served.

Comparison of the draft GSA to the final Agreements

- 6.4.6 The draft GSA was also changed considerably during post-award negotiations. Hereunder are the most salient changes that entailed the introduction of new concepts. These included:
 - a. The introduction of distinction between Delimara 3 Phase 1 and Delimara 3 Phase 2. In the draft GSA, no reference was made to the Phase 1 Gas Delivery Date, with the key milestone in this case being the Gas Delivery Date. According to the draft GSA, the Scheduled Gas Delivery Date was to be 18 months from the day being four weeks following the issue of a development permit. In the final GSA, the Scheduled Phase 1 Gas Delivery Date was to be 18 months from the Schedule Start Date, and the Scheduled Phase 2 Gas Delivery Date was to be 24 months from the Schedule Start Date. These dates were to fall on 14 October 2016 and 14 April 2017, respectively. Furthermore, the final GSA introduced separate last dates for the Phase 1 Gas Delivery Date and the Phase 2 Gas Delivery Date.

- b. Liquidated damages-related changes arising from the introduction of the Phase 1 Gas Delivery Date milestone. In the final GSA, Phase 1 delay liquidated damages with respect to the non-achievement of the Phase 1 Gas Delivery Date by the Scheduled Phase 1 Gas Delivery Date were contemplated.
- c. The term referred to as the Gas Availability Date, scheduled as 14 October 2016, and the consequent determination of the Gas Availability Payment Commencement Date.
- d. The introduction of a new provision relating to performance liquidated damages. In terms of the final GSA, for the period prior to the Energy Delivery Date, performance liquidated damages were to be limited to €500,000 yearly.
- e. Provisions regulating testing. In the draft GSA, no reference was made to the obligation on Enemalta to provide the requisite load for testing, or that it was to provide the assistance which the SPC reasonably requested in connection with the interface of Delimara 3 with the gas facility. Other changes in testing resulted from the introduction of the distinct phases for the conversion of Delimara 3. These comprised phase 1 functional tests, phase 1 and phase 2 performance acceptance tests and phase 1 and phase 2 reliability tests. Noted in the final GSA was that the gas facility phase 1 functional tests were to assess the capabilities of the gas facility relative to the correct operation of all mechanical and electrical protective, control and monitoring systems, and redundant system changeover. Furthermore, measurements were to be taken to establish that storage tanks met the specific capacity requirement, that is, 125,000m³. In the draft GSA, the functional tests were to assess the protection and full load capability of the facility. Furthermore, measurements were to be taken to demonstrate that the capacity of the fuel storage tanks exceeded 170,000m³.
- f. The provision that ElectroGas Ltd was to maintain a log of fiscal metering system readings for a minimum of five years was newly introduced in the final GSA.

6.4.7 The NAO noted that certain provisions stipulated in the draft GSA were not retained in the final GSA. These comprised:

- a. Provisions regarding gas availability. The draft GSA had outlined that the SPC, when making declarations of gas availability, was to inform Enemalta of the gas available and not wilfully withhold availability. Furthermore, if the SPC received a nomination for the gas facilities to operate for a complete hour, and the metered gas availability for that hour was less than 95 per cent of the hourly average gas nomination, then the demonstrated gas availability was to be deemed to be the average metered gas availability in that hour and that the gas availability payment was to reflect this.
- b. The deletion of a condition relating to a daily reporting requirement, whereby the SPC was to specify the amount of the Contract LNG Stock available at the beginning and the end of the day.

- c. Reference to the term 'Minimum Acceptance Gas Availability'. In the draft GSA, this was the higher of 1,100 mmBTU/h and 95 per cent of the tendered gas availability. Notwithstanding this, the NAO acknowledges that testing with respect to the GSA was substantially restructured in light of the introduction of Delimara 3 Phase 1 and Delimara 3 Phase 2.
- d. Adjustments to the procedure for the nomination of gas. According to the draft GSA, Enemalta could request a daily quantity higher than the daily maximum quantity, subject to the SPC's consent. In this case, the SPC was to use reasonable efforts to make available the requested quantity and Enemalta was to be invoiced accordingly. However, Enemalta did not have the right to nominate such a request, or to request gas at a delivery pressure in excess of the proper delivery pressure. If Enemalta submitted such a nomination or revised nomination, the SPC was to use reasonable efforts to accommodate it. Nevertheless, the SPC retained the right to reject Enemalta's nomination if it was unable to deliver. The draft GSA also included provisions in relation to periods of inability to make available or take the properly nominated quantity. For the duration of the period covered by a current proper nomination, the properly nominated quantity for each day was to be the quantity specified in such proper nomination, and if the period of inability exceeded the period of the current proper nomination, Enemalta's nomination, deemed or revised nomination was to be limited to the daily contract quantity.
- e. Instances when LNG stock fell below the minimum amount. According to the draft GSA, except for prior written consent from Enemalta, the SPC was not to declare any gas availability if doing so would cause the contracted LNG stock to fall below the minimum amount. However, Enemalta could, at its discretion, decide that an amount of LNG within such contracted LNG stock could be utilised to meet the SPC's obligation to supply gas and instruct the SPC accordingly. In such an event, the SPC could declare gas availability in respect of such LNG stock and this would be deemed not to constitute a contract LNG stock failure.
- f. Indemnity-related clauses in respect of non-conforming gas. The draft and final GSAs stated that in the event of non-conforming gas being delivered to Enemalta without notice, then the SPC/ElectroGas Ltd was to indemnify Enemalta against the costs of any physical damage to Delimara 3 directly resulting from the use of such gas, including any resultant increased operating and maintenance costs. However, according to the draft GSA, the SPC was to indemnify Enemalta against an amount equivalent to the reduction in the Gas Availability Payment and/or the Gas Delivery Payment arising out of a total or partial outage of Delimara 3 due to the use of the non-conforming gas. Furthermore, such non-conforming gas was to be treated as gas taken by Enemalta for the purposes of payment and Enemalta's take or pay obligations.

6.4.8 In addition to the above, the Office established that modifications to a number of clauses were undertaken through the post-award negotiations. These entailed:

- a. Amendments relating to the consideration of take or pay obligations. In the draft GSA, the annual take or pay quantity was to be 85 per cent of the annual contract quantity. The reduction of the take-or-pay obligation was to be for all quantities of gas actually taken by Enemalta during such period or year, all properly nominated quantities of gas not delivered for any reason, including any force majeure event affecting the SPC and/or Enemalta, all properly nominated quantities which were rejected by Enemalta in line with the Agreement and all quantities of non-conforming gas which were delivered to Enemalta without notice and opportunity to reject it. Specified in the final IA was that during the LNG Supply Term, the Enemalta contract quantity consisted of the contract volume and any upward revisions effected by Enemalta. This implied that the 85 per cent limitation no longer applied to the determination of the take or pay quantity. Furthermore, the take or pay obligation was subject to reductions in terms of various provisions relating to net electrical output taken by Enemalta and dispatch instructions not delivered for reasons attributable to ElectroGas Ltd, among other scenarios (paragraph 6.3.53 refers). The interchangeability of net electrical output with gas in accounting for Enemalta's take or pay obligations represented a significant change.
- b. Adjustments to the method of calculation of the effective commodity price. In the draft GSA, the effective commodity price during the fixed price period was to be the fixed price, expressed in €/mmBTU, while beyond the fixed price period, it was to be the multiplication of a commodity multiplier expressed in bbl/mmBTU and the Brent price for the month occurring three months prior, as quoted in US Dollars per barrel on ICE, averaged over the particular month and divided by the foreign exchange reference rate for US Dollars per euro quoted by the European Central Bank for the last business day of the month. In the final IA, the effective commodity price for gas was to be determined through reference to the value and quantity of opening stock and delivered stock during the billing period (Appendix G refers).
- c. Revisions to how the other operating costs allowance was to be calculated. In the draft GSA, the allowance pertaining to other operating costs was to be computed through reference to a factor accounting for inflation, the base delivery charge and a base variable operating cost expressed in €/mmBTU, and the gas delivered per hour at the Delimara 3 connection point, expressed in mmBTU and aggregated for the hours in the billing period. In the final GSA, the allowance pertaining to the other operating costs was to be computed through reference to the total variable operating costs for gas, expressed in €/mmBTU, and the gas delivered per hour at the Delimara 3 connection point, expressed in mmBTU and aggregated for the hours in the billing period. The total variable operating cost for gas was established at €0.07/mmBTU during the base price period and was subject to HICP revisions outside of the base price period.
- d. Similar changes applied to the calculation of the effective gas price. In the draft GSA, a factor accounting for inflation, the base delivery charge and a base variable operating cost expressed in €/mmBTU were utilised. In the final GSA, the effective gas price was determined through reference to the total variable operating cost.

- e. A change in the method of calculation of the adjustment factor, a component of the Gas Availability Payment. In the final GSA, the formula for the adjustment factor that was to apply from the Gas Availability Payment Commencement Date to the Open Cycle Energy Delivery Date was:

$$S_H = \left(1 - \frac{F_H}{8,000}\right)$$

From the Open Cycle Energy Delivery Date, the adjustment factor was to be calculated as follows:

$$S_H = \left(1 - \frac{F_H}{40,000}\right)$$

With FH being the number of m³ shortfall in the Actual Contract Stock below the Contract Stock Requirement during Hour H, without counting the shortfall in any hour where the Contract Stock Shortfall was due to an Enemalta Risk Event, an Uninsurable Risk Event or a Relief Event, or a Natural Force Majeure Event affecting the facilities.

However, in the draft GSA, the formula for the adjustment factor was:

$$S_H = \left(1 - \frac{2 \cdot F_H}{10}\right)$$

with FH being the number of guaranteed gas days shortfall during an hour.

- f. The review of provisions regulating planning of gas requirements. According to the draft GSA, Enemalta was to submit five-year rolling forecasts and an annual plan. In the final IA, the requirement for the submission of the five-year rolling forecasts was not included; however, Enemalta was required to provide a three-month ahead forecast and an annual plan. In complying with the final IA, Enemalta was required to submit more details in relation to the annual plan. Other aspects relating to planning that featured in the draft GSA but were excluded in the final Agreements included the provision that the SPC was to review the proposed annual plan and either confirm its acceptance or notify Enemalta of its wish to discuss such plan. The SPC could only reject the proposed plan if the annual plan did not comply with the requirements of the Agreement.
- g. Upward revisions to the quantities of gas specified in the Agreements. In the draft GSA, the annual maximum quantity of gas was 5,200,000mmBTU, while the daily maximum quantity of gas was 26,127mmBTU. In the final IA, the annual contract volume was set at 14,000,000mmBTU, which amount could be revised by an additional 2,000,000mmBTU.
- h. Adjustments to the testing method. In the final GSA, during the gas facility phase 1 and phase 2 reliability tests, the gas facility together with all auxiliary plant, equipment and

services required, were to be started remotely and automatically, and remain in operation for a continuous 72-hour period under different demanded gas delivery rates. This contrasted with that stipulated in the draft GSA, wherein the reliability tests comprised a 72-hour period, which was to be followed by a 30-day reliability run under a variety of demanded gas delivery rates.

- i. An amendment to contract stock requirements. In the draft GSA, the SPC was to provide and maintain a stock of fuel that was not to be less than 10 guaranteed gas days, that is, sufficient gas to enable Delimara 3 to generate at 150MW for ten days. The modality of measurement was revised in the final IA, with minimum contract stock requirements ranging from 4,000m³ to 20,000m³ depending on milestones achieved, aggregating in a cumulative manner.
- j. Matters relating to the treatment of make up gas. In the draft GSA, deliveries of make up gas were to be priced at the prevailing gas price at the time that such make up gas was recovered by Enemalta, and there was to be a payment from Enemalta to the SPC, or vice-versa, as appropriate, to account for any differences between the prevailing gas price at the time the make up gas was recovered and the prevailing gas price when the applicable annual take or pay deficiency arose. If Enemalta failed to recover any quantity of make up gas by the termination date, then the SPC would cease to have any obligation to pay Enemalta any amount as a refund or rebate with respect to it. In the final IA, Enemalta was not liable to pay the Energy Delivery Payment in respect of Enemalta Make Up Gas, whether taken as gas or net electrical output.

Comparison of the draft IA and the draft Shared Responsibility Agreement to the final Agreements

- 6.4.9 Provisions stipulated in the draft IA and the draft Shared Responsibility Agreement were also subject to marked changes in the final Agreements. The most salient changes noted by the NAO related to the introduction of additional contracts, amendments to the operational set-up, the introduction of a conversion term, revisions to payments and termination-related conditions, among others. Hereunder are the changes deemed most significant by this Office, structured according to theme.

General Issues

- a. While the effective date in the draft IA meant the date being four weeks from the date on which a development permit was issued, in the final IA this meant the date on which a number of conditions were satisfied or waived. These mainly related to the signature of various contracts and financing arrangements being in place, among others (paragraph 6.3.3 refers).
- b. The Enemalta development fee of €30,000,000 was introduced in the final IA.

- c. The Enemalta Direct Agreements were contemplated in the final IA.
- d. No reference was made to an LNG Supply Agreement or an Enemalta LNG Supply Direct Agreement in the draft IA, which references later featured in the final IA.
- e. There was also no mention of the FSU Owner, the FSU Conversion and Charter Agreement, the Enemalta FSU Charter Direct Agreement, the FSU O&M Agreement, the Enemalta FSU O&M Direct Agreement, the FSU Charter Credit and the FSU Variations Credit in the draft IA.
- f. The draft Shared Responsibility Agreement outlined that the SPC was to manage its supply obligations under the GSA and the D4SA (an internal supply arrangement to deliver gas from the SPC's gas facilities to Delimara 4) to ensure that, in the first instance, it was able to meet its obligations under the PPA. Should Enemalta so instruct, the SPC was to divert gas to supply Delimara 3 at the expense of Delimara 4. If the SPC was unable to meet its obligations under the PPA as a result of such a direction by Enemalta, then Enemalta was to indemnify the SPC against any ensuing liability or loss. These provisions were not included in the final Agreements.
- g. The early gas period, its contract quantity and commencement date, the early gas contract quantity nomination and the Enemalta contract quantities as specified for each supply reference period were introduced in the final IA.

Term

- a. In the draft IA, the term of the Agreement was to continue, unless terminated earlier, until the expiry or early termination of the Site Lease Deed. The term of the final IA was, unless terminated earlier in accordance with the Agreement, to be in effect for a period of 18 years from the Open Cycle Energy Delivery Date, or as accordingly extended.

Financing of the Project

- a. In the draft IA, financial closing meant the day, on or after the effective date, on which the SPC had satisfied all conditions precedent in the Transaction Agreements, made a first drawdown in terms of the Financing Agreements, and had issued a notice to proceed to the EPC contractor. In the final IA, such date corresponded to the date falling five business days after the fulfilment, or waiver, of the conditions precedent of the Financing Agreements and the signature of various contracts, among others (paragraph 6.3.3 refers).
- b. Stipulated in the draft IA was that financial closing was to be achieved within three months following the effective date of the contract. This clause was eliminated in the final IA.

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- c. The draft IA further noted that ElectroGas Ltd was not to execute any material amendment or modification related to the repayment of principal without submitting to Enemalta not less than 15 business days prior to the execution of the loan documents a schedule or term sheet setting out the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. Given Enemalta's obligations relating to security of supply, if it had any objections to such term sheet or schedule based on such concerns, it was to inform ElectroGas Ltd within 15 business days as otherwise, it would be deemed not to have objected to those terms, and ElectroGas Ltd was to be entitled to execute the revisions. Moreover, if as a result of Enemalta exercising its rights under the finance clauses in the IA unreasonably, financial closing was delayed, the required financial closing date was to be extended by the delay caused. Any objection by Enemalta to any terms potentially increasing Enemalta's costs and/or risks, delay the project, and/or impact the security of supply in Malta, was not to be deemed an unreasonable objection.

Ownership

- a. Noted in the final IA was that subsequent to the Final Effective Date, at any time prior to three years following the Open Cycle Energy Delivery Date, the shareholders of ElectroGas Ltd could not transfer their ordinary share capital except for certain specified circumstances. The draft IA had not specified that this period was to be after the Final Effective Date. Furthermore, the draft IA had included an additional reason for transfer, namely a transfer resulting from the creation or enforcement of a security interest in or over any ordinary share capital. In the final IA, transfers were only permissible provided that the initial shareholders retained ownership of not less than 51 per cent of the ordinary share capital until three years after the Energy Delivery Date. This provision did not feature in the draft IA.
- b. While in the final IA permitted transferees of shares and assets were to conform with other obligations including that aggregate shareholders' funds were not less than €300,000,000, in the draft IA the permitted transferee had to have (or its wholly-owning parent corporation had) a net capitalisation value of not less than US\$500,000,000, or its equivalent.

Operational Issues

- a. The draft IA provided terms and conditions in relation to a delay in the granting of authorisations, approvals, acknowledgements, consents, licences or permits to be issued to the SPC or the contractors for the construction, ownership, operation, and maintenance of the facilities. These were not included in the final IA.
- b. The SPC's obligations in relation to the LNG carriers had not been considered in the draft Agreements, while reference to the supply of LNG was not addressed to the same level of detail as that in the final IA.

- c. There was no reference to other reporting requirements relating to LNG and gas following the earlier of the Gas Availability Payment Commencement Date or the Open Cycle Energy Delivery Date in the draft Agreements. This must be understood in light of the fact that these milestones were introduced in the final Agreements.
- d. In the draft IA, there was no obligation on the SPC to grant Enemalta access to the leased premises to observe progress on the construction of the facilities and to undertake any audit, investigation or inspection to verify whether the conditions of the Transaction Agreements were being complied with. This obligation was introduced in the final IA, together with another provision whereby Enemalta, or its designated representative, was to have access to the accounts of ElectroGas Ltd relating to the construction of the facilities. The draft IA made no reference that, following the Energy Delivery Date, the SPC and Enemalta were to engage an independent assessor to compile a yearly report to ascertain whether the SPC was adhering to the maintenance schedule set out in the Transaction Agreements. This requirement was included in the final IA. Also stipulated in the final IA was that failure by ElectroGas Ltd to comply with the indicated maintenance requirements entitled Enemalta to withhold five per cent from each Energy Availability Payment and Gas Availability Payment until the required maintenance was undertaken. Enemalta was to settle withheld payments on completion of the required maintenance works by ElectroGas Ltd.
- e. The final IA specified that Enemalta was entitled to enter into any agreement with a third party for the provision of electricity and/or gas procured by it from ElectroGas Ltd. The NAO is of the understanding that this clause assumes relevance in view of the LNG SPA entered into between Enemalta and Socar Trading SA. Corresponding provisions were not included in the draft Agreements.
- f. There is no mention of the Security of Supply Agreement Acknowledgement and Consent and the Construction Management and Interface Agreement in the draft Agreements.
- g. Specified in the final IA was that Enemalta and ElectroGas Ltd were to commence negotiations on the Supply Agreements Direct Agreement by not later than four months after the Effective Date or as agreed by the parties. No corresponding provision was noted by the Office in the draft Agreements.
- h. In the draft IA it was noted that if two situations out of the following three existed simultaneously, namely:
 - i. the SPC was affected by a change in law prior to the Energy Delivery Date or the Gas Delivery Date;
 - ii. Enemalta had failed to allow the SPC to commence necessary works in relation to the project within the time period specified in the Energy Agreements or Enemalta has deferred any test to be done during an operational period;
 - iii. the SPC had failed to make electricity and/or gas available at the connection point;

then, it was to be deemed that whichever situation arose first shall have existed at such time and the other situations above which in fact existed at the same time shall be deemed not to have existed until the first delay no longer existed. This reasoning was to be applied again if two or more of the above situations arose simultaneously.

- i. Noted in the draft Shared Responsibility Agreement was that a rejection by the SPC of a scheduled cargo delivery would have serious consequences on its ability to meet its obligations under the PPA and the GSA, including the Contract LNG Stock Obligation of 10 guaranteed gas days. If, despite the SPC undertaking its best endeavours, Enemalta was notified that the SPC faced the risk of rejecting a scheduled cargo delivery of LNG for lack of ullage, Enemalta undertook to use commercially reasonable endeavours to dispatch Delimara 3 and Delimara 4 at the maximum output, even if this was to result in the disposal of electricity via the interconnector at a loss. Such a loss would be charged to the SPC's account. However, cited in the draft Shared Responsibility Agreement was that this situation was not expected to arise if Delimara 4 was designed and operated in accordance with good industry practice. The NAO noted that these provisions did not feature in the final Agreements.
- j. The draft Shared Responsibility Agreement included provisions relating to Contract LNG stock and Fuel Stock obligations that were not included in the final Agreements. According to the draft Shared Responsibility Agreement, as long as the Contract LNG Stocks and Contract Fuel Stocks in aggregate exceeded or equated to the sum of 10 guaranteed electricity days and 10 guaranteed gas days, the SPC was not liable for breaching the individual Contract LNG Stock Obligations or Contract Fuel Stock Obligations under the GSA and PPA, respectively. It was also noted that any shortfall was to be allocated to the GSA and that the SPC was to be deemed to have breached its Contract LNG Stock Obligation, until such time as the Contract Fuel Stocks fell below 10 guaranteed electricity days, when the SPC would also have breached its Contract Fuel Stock Obligation. Enemalta and the SPC were to meet from time to time to discuss the extent to which the Contract LNG Stock Obligation and Contract Fuel Stock Obligation would enable the SPC to manage the operation of its gas facilities without the requirement to hold excess stocks above the level of the sum of the Contract LNG Stock Obligation and the Contract Fuel Stock Obligation. To agree to this, Enemalta would have to be convinced that the Contract LNG Stock Obligation and Contract Fuel Stock Obligation would still represent truly available and retrievable stocks so that Enemalta would indeed be able to dispatch Delimara 3 and Delimara 4 at maximum output for 10 days and 15 days, respectively. LNG contained in a tanker within the Marsaxlokk harbour and available to the SPC was to be deemed to form part of the Contract LNG Stocks and Contract Fuel Stock after accounting for the time required to transfer such LNG to the storage facility.
- k. The inclusion of the concept of LNG heel was included in the final Agreements.
- l. The concept of a force majeure extended term was first introduced in the final IA.

- m. Detailed LNG and gas specifications were included in the final IA.
- n. Cited in the final IA were provisions in relation to the risk of loss of, and transfer of title to gas and LNG.
- o. The draft Agreements did not stipulate the procedures applicable subsequent to an event of loss, particularly, the determination of commercial viability in relation to the reinstatement, reconstruction, replacement, repair or renewal of the facilities in line with the Supply Agreements. These procedures were addressed in the final IA.
- p. The draft Shared Responsibility Agreement included the concept that if deliveries of gas were interrupted or affected to the extent that the SPC could reasonably foresee cause for termination of the PPA and/or the GSA within six months, the SPC was entitled to investigate, organise, and deliver alternative liquid fuel so that it would be able to meet its obligations under the PPA and/or the GSA and forestall termination. This was not included in the final Agreements.
- q. Also noted in the draft IA was that given Enemalta’s obligations relating to security of supply, and given that it was under an obligation to acquire Delimara 4, Enemalta and the SPC agreed to engage, on a yearly basis following the Energy Delivery Date/Gas Delivery Date, an expert to draw up a report in relation to Delimara 4. The expert’s report and the applicable terms of reference were to be agreed between Enemalta and the SPC. The expert’s report was to, at least, set out the then current state of Delimara 4 and, in particular, the maintenance, repairs, improvements and other interventions carried out since the last report (or the Energy Delivery Date/Gas Delivery Date, in the case of the first report), the maintenance, repairs, improvements and other interventions planned to be carried out in the twelve months following the audit, and the maintenance, repairs, improvements and other interventions which are required to be carried out at Delimara 4 in order for it to be in a state that would be certified in terms of the Agreement. Furthermore, the expert’s report was to also stipulate a time period within which the maintenance, repairs and other interventions were to be carried out by the SPC. If the SPC failed to carry out such maintenance, repairs, improvements and other interventions as indicated in the expert’s report, within the time limits also set out therein, then Enemalta was to be entitled to withhold, from each Availability Payment made to the SPC, as a penalty for mere delay, an amount equivalent to 10 per cent of the Availability Payment for the first 60 days of delay, and an amount equivalent to 20 per cent of the Availability Payment from each Availability Payment thereafter, until the maintenance, repairs, improvements and other interventions as indicated in the expert’s report were carried out by the SPC. These provisions were revised in the final IA, wherein failure of ElectroGas Ltd to comply with the indicated maintenance entitled Enemalta to withhold five per cent from each Energy Availability Payment and Gas Availability Payment until the required maintenance was undertaken. Enemalta was to settle withheld payments on completion of the required maintenance works by ElectroGas Ltd.

- r. The final IA regulated the consideration of material changes, adverse or beneficial, to revenues and costs with an annual aggregate effect of at least €25,000 in any one year (paragraphs 6.3.97 to 6.3.99 refer). According to the draft IA, following the fifth anniversary of the Energy Delivery Date/Gas Delivery Date, for any reason except for events of default or force majeure, if there was a material adverse change in LNG pricing and/or power market conditions that precluded Enemalta or the SPC from obtaining any commercial benefit from the project, then Enemalta and the SPC were to enter into discussions in good faith to agree on the manner in which to progress with the project, including the possibility of terminating the Transaction Agreements.

Payments

- a. The inclusion of carbon credits, methane number credit, sulphur content credit, excess allowances costs, Delimara 3 Gas Specification Credit Outstandings, and provisions related thereto featured in the final IA and were not considered in the draft Agreements.
- b. The final IA presented the concept of the daily demurrage rate.
- c. The draft IA did not provide for the Enemalta letter of credit and provisions related thereto.
- d. The final IA included the concept of O&M costs.
- e. In the final IA, it was noted that the performance guarantee was to be maintained from one month before the earlier of the Scheduled Phase 1 Gas Delivery Date or the Scheduled Open Cycle Energy Delivery Date until 180 days following the Energy Delivery Date. In the draft IA, the performance guarantee was to be delivered to Enemalta at least seven days prior to the effective date, and was to be maintained throughout the period from the effective date until termination.
- f. The provision that the aggregate amount of the performance guarantee to be replenished was not to exceed €13,000,000 was included in the final IA but was not included in the draft IA.
- g. Also included in the final IA were provisions in relation to ElectroGas Ltd being liable to pay Enemalta an additional energy cost for every hour should the actual contract stock be zero following the Gas Availability Payment Commencement Date and during the LNG Supply Term and the Energy and Gas Conversion Term. Moreover, the final IA stipulated how such additional energy cost was to be calculated. Further indicated was Enemalta's right to make claims for additional energy costs and seek compensation. These provisions were not considered in the draft Agreements.

- h. The final IA outlined that ElectroGas Ltd was required to mitigate any adverse effects of a change in law on the project. The draft IA had provided further details in this respect, including changes in tariffs in relation to a change in law resulting in an annual aggregate effect of at least €75,000 in any one or more years or extension in a milestone date.

Take or Pay Obligation

- a. Stipulated in the final IA were factors that would decrease the Enemalta Take or Pay Quantity. In the draft PPA and the draft GSA, these factors were limited to all quantities of net electrical output and gas actually taken by Enemalta and all dispatch instructions for net electrical output, properly nominated quantities of gas not delivered for any reason, including any force majeure event affecting the SPC and/or Enemalta, or instances of non-conforming gas which was rejected by Enemalta or delivered without notice and opportunity to reject.
- b. In the final IA, reference was made to factors that excused Enemalta from its Scheduled Take Obligation during a given Scheduled Take Period. These included the failure of ElectroGas Ltd to deliver the nominated gas quantities for reasons beyond its control and the supply of non-conforming gas without prior notification by ElectroGas Ltd (paragraph 6.3.59 refers). No such exemptions were contemplated in the draft Agreements.
- c. Furthermore, the final IA provided for Enemalta Mitigation Sales and Enemalta Scheduled Take Mitigation Sales. Noted in the final IA was that Enemalta was to reimburse ElectroGas Ltd for costs incurred in attempts at mitigating any adverse effects of a Scheduled Take Failure. In turn, the draft Shared Responsibility Agreement provided that Enemalta could request the SPC to supply gas as make up gas or the gas equivalent of make up power that Enemalta could resell. In the draft Shared Responsibility Agreement, the SPC was obligated to supply such resale gas at a daily quantity up to the daily maximum resale quantity established in the Agreement. Furthermore, if requested by Enemalta, the SPC was to use reasonable efforts to supply larger quantities subject to physical deliverability and other contractual obligations.

Insurance Cover

- a. The draft IA did not include certain provisions in relation to the insurance policies and coverage that was to be obtained and maintained by the SPC. According to the draft IA, the SPC was not excused from acquiring any coverage required should this be unavailable for reasons not attributable to it and that in such case, the SPC was to notify Enemalta through an insurance coverage notice. These matters were addressed in the final IA. Furthermore, the final IA included the provision requiring ElectroGas Ltd to procure insurance to the extent of the available cover.
- b. In general, the final IA provided more detail in respect to specific sums that were to be insured by ElectroGas Ltd. However, the NAO noted that although the draft IA required

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that the SPC obtained insurance cover for environmental liability, this requirement was not included in the final IA.

Conversion Term

- a. The concept of a conversion term and all provisions related thereto were introduced in the final IA. This resulted in provisions intended to regulate planning and forecasting of LNG requirements, the connection point and metering procedures, supply nomination procedures, and ElectroGas Ltd mitigation sales in relation to any ElectroGas Ltd Take or Pay Deficiency, among others. Also considered in the final was the scenario where Enemalta would pay ElectroGas Ltd a supply credit in respect of LNG sales to be carried out by Enemalta during the Energy and Gas Conversion Term. Payment terms in relation to this period were also included in the final IA.

Assignment and Novation

- a. The final IA provided that ElectroGas Ltd could assign, transfer and/or novate its rights and/or obligations under the IA to the lenders, their agent or trustee in order to provide and enforce security under the Financing Agreements. However, cited in the draft Shared Responsibility Agreement was that the SPC could assign its rights only to the lenders. Furthermore, stated in the final IA was that Enemalta was entitled to assign and novate its entire rights and obligations pursuant to the Supply Agreements to a third party on the fulfilment of a number of conditions. This included the entry into agreements substituting the third party for Enemalta in the Supply Agreements, the SSA and the Supply Agreements Direct Agreement. In the draft Shared Responsibility Agreement, it was noted that Enemalta was entitled to transfer its rights and obligations under this Agreement to the Government, any entity controlled by the Government, or to any other person substantially performing any of the functions previously performed by Enemalta, provided that, in the latter case, such person was able to abide by and finance the obligations transferred to it, or if Enemalta guaranteed the performance of such person's obligations following the transfer.

Damages

- a. While several provisions were left unchanged, the draft Shared Responsibility Agreement did not provide for performance liquidated damages during the Open Cycle Energy Delivery Period. Moreover, noted in this Agreement was that if deliveries of gas were interrupted or affected such that the SPC became liable to pay performance liquidated damages under both the PPA and the GSA, the SPC was to pay Enemalta performance liquidated damages at the rate of €500 for each percentage point shortfall in energy availability up to a maximum of €10,000 daily. In the final PPA, during the Open Cycle Energy Delivery Period, ElectroGas Ltd was to pay liquidated damages of €92 for each percentage point shortfall in the gas turbine generator average availability, capped at €1,830 per day. When operating on combined cycle, ElectroGas Ltd was to pay liquidated damages of €375 for each percentage point shortfall in the Delimara 4 average availability, up to a maximum

of €7,500 per day. Similar revisions were noted with respect to the final GSA, wherein ElectroGas Ltd was to pay €125 for each percentage point shortfall below the acceptable level stipulated in the Agreement, capped at €2,500 daily.

- b. The maximum liability in terms of performance liquidated damages was limited to €1,000,000 for each contract year. In the final PPA and GSA, it was established that ElectroGas Ltd's liability to pay performance liquidated damages was to be capped at €1,000,000 yearly, bar with respect to the period prior to the Energy Delivery Date, in respect of which performance liquidated damages were to be limited to €500,000.
- c. The delay liquidated damages that were to be paid by ElectroGas Ltd in the event of default in attaining the tendered energy capacity of Delimara 4 by the Scheduled Energy Delivery Date were revised. In the draft Shared Responsibility Agreement, delay liquidated damages were set at €37,500 daily and capped at €9,000,000 annually in respect of the Supply Agreements. In the final PPA, compensation in terms of delay liquidated damages was set at €20,000 daily for each gas turbine generator during the open cycle period and €80,000 per day during the combined cycle period. Nevertheless, delay liquidated damages were capped at an annual €18,000,000 with regard to the Supply Agreements.
- d. Similar provisions applied in terms of the delay liquidated damages payable by ElectroGas Ltd if the scheduled gas delivery dates were not met. In the draft Shared Responsibility Agreement, the SPC was to pay delay liquidated damages of €12,500 daily, capped at €9,000,000 each year with respect to the Supply Agreements. In the final GSA, delay liquidated damages with regard to Phase 1 and Phase 2 were set at €15,000 and €5,000 daily, respectively. Pursuant to the Supply Agreements, delay liquidated damages were capped at an annual €18,000,000.

Termination and Transfer of the Facilities

- a. Introduced in the final IA were the concepts of the GSA exit, accelerated GSA exit and matters relating thereto.
- b. In the draft IA, a material breach left uncured for fifteen days (or a longer period as agreed) of receipt of a notice from the SPC specifying the breach and requesting the remedy thereof entitled the SPC to terminate the Agreement if an expert found that Enemalta was in material breach of the Agreement, unless the expert determined that the breach could be cured within a specified period and Enemalta cured such breach during this period. In the final IA, Enemalta was entitled to terminate the Project Agreements or serve a default notice on ElectroGas Ltd if ElectroGas Ltd materially breached any of its material obligations under the IA, the Project Agreements (except for the Site Services Agreement) or the Site Lease Deed and this continued uncured for 30 days after notice of such breach from Enemalta.

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- c. The Office reviewed changes made to the reasons for termination of the Project Agreements by Enemalta and established that the draft IA and the final IA were consistent in this regard. However, the NAO noted that, in the draft IA, the reasons for termination in terms of material obligations were listed as an appendix, whereas in the final IA, these reasons were assimilated into the Agreement.
- d. With respect to instances of termination by the SPC or ElectroGas Ltd, the NAO noted that the final IA made reference to additional reasons for termination. These included expropriation, requisition, confiscation and nationalisation by Government or Enemalta of the assets or shares of ElectroGas Ltd, and the assignment or transfer of rights or obligations by Enemalta in breach of the Supply Agreements. In addition, certain conditions common to the draft IA and the final IA were amended. For example, the period within which Enemalta's failure to pay any amount due would constitute a reason for termination was revised from 30 days in the draft IA to 10 days in the final IA.
- e. Introduced in the final IA were the concepts of the ElectroGas Ltd Force Majeure Equity Compensation, the ElectroGas Ltd Force Majeure Fair Value, the Enemalta Default Equity Compensation, the Enemalta Force Majeure Equity Compensation, the Enemalta Force Majeure Fair Value, the Residual Sale Option Fair Value and the Sale Option Equity Value.
- f. The NAO noted differences in the definition of the ElectroGas Ltd Default Termination Value. Changes noted specifically related to the reduction that was to be effected from the amounts due to lenders under the financing agreements and the tax liability of the SPC/ElectroGas Ltd when calculating the ElectroGas Ltd Default Termination Value. The differences identified included the deletion of decommissioning costs and the residual market value of any other assets and rights of the SPC, and the inclusion of amounts paid by ElectroGas Ltd to its shareholders during termination in the final IA.
- g. Similarly, in the draft IA, the definition of the Enemalta Default Fair Value included the reduction of the decommissioning costs and the market value of any other assets and rights of the SPC less liabilities.
- h. Specified in the final IA was that, in instances of default by Enemalta following the Final Effective Date, where ElectroGas Ltd opted to terminate, ElectroGas Ltd could transfer the facilities to Enemalta on payment by Enemalta of the Enemalta Default Fair Value, together with any other amounts due. Similarly, if Enemalta terminated the Project Agreements for convenience, ElectroGas Ltd could transfer the facilities to Enemalta on payment by Enemalta of the Enemalta Default Fair Value, together with any other amounts due. In the draft IA, in instances of default by Enemalta, the SPC could elect to transfer the facilities to Enemalta. If the SPC elected to transfer the facilities to Enemalta, Enemalta could only be obligated to acquire the facilities at the Enemalta Default Fair Value if an expert certified that such facilities were in a good state of maintenance and repair in accordance with

applicable law and industry standards. If the facilities were not certified as required, then the transfer price was to be equal to the Enemalta Default Fair Value less the full cost and any related expenses (including losses to be incurred by Enemalta as a result of inability to use the facilities during its repair) required in order for Enemalta to bring the facilities to the standard required (the certification deductions). If the certification deductions exceeded the Enemalta Default Fair Value, the transfer price was to be deemed to be €1. If the certification deductions exceeded the Enemalta Default Fair Value, the SPC was to be obligated to pay Enemalta an amount equivalent to the difference between the certification deductions and the Enemalta Default Fair Value. Similar changes were noted in the analysis of the Sale Option Fair Value, the Enemalta Force Majeure Fair Value and the ElectroGas Ltd Default Termination Value.

- i. According to the draft IA, notwithstanding anything to the contrary in the Transaction Agreements, the SPC was not to seek to terminate the draft IA, or any other of the Project Agreements pursuant to a trigger event (as defined in the SSA) before providing notice to the Government in accordance with the terms of the SSA. If the Government failed to step in and acquire energy and/or gas, on the terms set out in the Supply Agreements within five business days from receipt of such notice, then the SPC could proceed with termination.
- j. Stipulated in the draft IA was that whenever the Agreement was terminated pursuant to a Force Majeure Event, and insurance proceeds were available in this respect, the total amount of the net proceeds to which the SPC was entitled for its facilities was to, if not used to effect a restoration or make repairs to such facilities, be used to pay all indebtedness secured by the facilities, any compensation payable to Enemalta, and then to the SPC, in that order. This provision did not feature in the final IA.
- k. Enemalta's payment obligations were to be secured by a letter of credit for an amount equivalent to the Sale Option Fair Value in the draft IA while in the final IA this was to be equal to the Sale Option Equity Value.
- l. The final IA included provisions in respect of termination by Enemalta for a prolonged Enemalta risk event, by ElectroGas Ltd for a prolonged force majeure event, termination for an event of loss or for matters such as transfer on invalidity and termination of the Site Lease Deed. The draft IA did not stipulate such provisions.

Adjustments to the End of the Term

- a. Cited in the final IA were a number of conditions relating to adjustments at the end of the term that were not stipulated in the draft Agreements (paragraph 6.3.94 refers). Furthermore, the final IA stipulated that, where deemed availability payments were paid by Enemalta after (before) the Open Cycle Energy Delivery Date, the term could be extended (shortened) by a period where the aggregate cumulative availability payments for such period would equal the aggregate deemed availability payments. In addition, the

final IA established provisions for the disbursement of a budget incentive payment to be paid by Enemalta to ElectroGas Ltd, and a budget liquidated damage payment to be paid by ElectroGas Ltd to Enemalta, depending on the level of O&M costs incurred due to an extended term arising from a force majeure event. All these provisions did not feature in the draft Agreements.

Key Changes

- 6.4.10 Having compared the draft Supply Agreements appended to the RfP with those ultimately entered into by Enemalta with ElectroGas Ltd, the NAO is of the opinion that the ensuing represent the most significant changes effected. Notable in this regard was the introduction of operation of Delimara 4 in open cycle mode. In the draft PPA, the milestone relating to the open cycle energy delivery date was not considered, but only referral to the energy delivery date was made. Another significant amendment applicable to the PPA and the GSA related to the consideration of take or pay obligations. In the draft PPA and GSA, the quantity of take or pay was to be of net electrical output and gas, and was to be 85 per cent of the annual contract power and the annual contract quantity, respectively. Specified in the final IA was that during the LNG Supply Term, the Enemalta contract quantity consisted of the contract volume and any upward revisions effected by Enemalta. This implied that the 85 per cent limitation no longer applied to the determination of the take or pay quantity. The interchangeability of net electrical output with gas in accounting for Enemalta's take or pay obligations also represented a notable change.
- 6.4.11 Phase 1 and Delimara 3 Phase 2. In the draft GSA, no reference was made to the Phase 1 Gas Delivery Date, with the key milestone in this case being the Gas Delivery Date, scheduled for 18 months following commencement. In the final GSA, the Scheduled Phase 1 Gas Delivery Date was to be 18 months from the Schedule Start Date, while the Scheduled Phase 2 Gas Delivery Date was to be 24 months from the Schedule Start Date.
- 6.4.12 Other provisions were introduced through the final IA. These included the Enemalta development fee of €30,000,000, payable by ElectroGas Ltd, as well as the concept of a conversion term. Related to this was the introduction of a GSA exit and an accelerated GSA exit, which allowed Enemalta to terminate the GSA at specific junctures during its term.

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Transaction Agreements: Direct and Other Agreements

7.1 Direct Agreements

7.1.1 Hereunder are the original agreements entered into by ElectroGas Ltd and the corresponding direct agreements through which novation was to be effected to Enemalta. Agreements novated in this manner comprised the LNG SPA, the FSU Conversion and Charter Agreement and the FSU O&M Agreement. Also included is the FSU – Enemalta Bridge Direct Agreement, which served to link the FSU – Enemalta Charter Direct Agreement and the FSU – Enemalta O&M Direct Agreement.

LNG Sale and Purchase Agreement

7.1.2 Socar Trading SA and ElectroGas Ltd entered into the LNG SPA on 14 April 2015. This Agreement regulated the sale of LNG by Socar Trading SA and its purchase by ElectroGas Ltd. The term of the Agreement was to expire after 10 years and one month from the start date. The start date was defined in the Agreement as the date falling 15 months after the commencement date, that is, 14 July 2016.²⁴ However, Socar Trading SA and ElectroGas Ltd could extend the LNG SPA through mutual agreement. The Agreement could also be terminated earlier in certain circumstances.

7.1.3 The Agreement regulated the transfer of title and risk of the LNG purchased and sold. Transfers of title and risk to the LNG were to pass from Socar Trading SA to ElectroGas Ltd at the point of delivery of the LNG. However, in the case of the transfer of title, Socar Trading SA retained the option for the transfer to take place in international waters, subject to the due notification of ElectroGas Ltd. In this case, Socar Trading SA and ElectroGas Ltd were to discuss the implications and costs involved.

7.1.4 The LNG SPA provided information regarding the transportation and delivery of each LNG cargo. It included requirements for LNG vessels, the receiving facilities, the arrival of the LNG cargo at the Marsaxlokk port, the berthing of the vessel and the unloading thereof. Furthermore, it was noted that Socar Trading SA was to have access to LNG vessels and provide for the transport of the LNG sold and acquired through the Agreement on an ex-ship basis. Also specified in the LNG SPA was that the LNG delivered was to be transported to and unloaded at the Delimara LNG receiving terminal or at an alternative discharge port. The requirements for cargo delivery at an alternative discharge port, and the construction of and due diligence at the LNG receiving terminal in Delimara were outlined.

²⁴ The NAO noted that this date, July 2016, was inconsistent with the commencement of the Early Gas Period cited in the IA as August 2016.

- 7.1.5 The Agreement stipulated that the facilities utilised by ElectroGas Ltd to take the delivery of LNG were required to comply with security of supply obligations in maintaining a minimum quantity of LNG stored at all times. In this respect, a technical minimum quantity of 2,000m³ was required to be kept at all times.
- 7.1.6 The LNG SPA also regulated the method of discharge of the LNG. Socar Trading SA was to discharge each LNG cargo either through a single or dual discharge. The volume of each LNG cargo for a single discharge was to range between 2,000m³ and the higher of either 110,000m³ or ElectroGas Ltd's available tank space at the time of the start of the unloading. In case of a dual discharge, the volume of every LNG cargo was to be between 2,000m³ and 125,500m³, with the first discharge equivalent to ElectroGas Ltd's available storage. ElectroGas Ltd was to seek to make available further tank space in the event that extra LNG tank capacity was added to the facilities used to receive LNG, in order for Socar Trading SA to be able to augment the discharge volume of each cargo. Furthermore, in the case of a dual discharge, following completion of the first discharge, the vessel was to shift and wait outside the Marsaxlokk Port. Thereafter, ElectroGas Ltd was to order Socar Trading SA to complete the discharge of the cargo promptly once sufficient tank space was expected to be available to allow the second discharge to be completed.
- 7.1.7 Also noted in the LNG SPA was that ElectroGas Ltd was to seek to maximise, up to a safe level, the drawdown rate from the LNG receiving terminal at the Marsaxlokk Port when the LNG ship was in between discharges. Socar Trading SA's sole remedy for ElectroGas Ltd's failure to maximise the drawdown rate was equivalent to ElectroGas Ltd's failure to take, outlined in paragraph 7.1.20, or for demurrage payments. In this respect, the daily demurrage rate was the sum of the daily market hire rate, established as the average of the reported daily hire rates within the specified broker reports published in a timeframe indicated in the Agreement, and the deemed quantity of boil-off in LNG mmbTU at the LNG price, pro-rated per day and expounded on in paragraph 7.1.13, where the daily boil-off was based on the LNG vessel's guarantees. Also stipulated in the Agreement was that if the LNG vessel was still unloading or expected to be doing so after the expiry of the time allowed for unloading, then ElectroGas Ltd was to provide Socar Trading SA with an estimate of the additional unloading time required and retained the right to request Socar Trading SA to complete unloading. Socar Trading SA was not to unreasonably withhold consent. ElectroGas Ltd was to pay all additional demurrage at the daily demurrage rate. If mutually agreed, ElectroGas Ltd was also to pay any reasonable additional costs incurred for the LNG vessel due to the extended unloading time.
- 7.1.8 Cited in the LNG SPA was the computation that was to determine the annual contract quantity of LNG to be sold, transported and delivered by Socar Trading SA and acquired and paid for by ElectroGas Ltd under the Agreement. During the Early Gas Period, which was to commence on 14 July 2016, this was to be zero, one, or two full cargoes of LNG in the range of 2,500,000mmbTU to 3,000,000mmbTU, scheduled by Socar Trading SA in the annual delivery programme. Subsequent to this period until the end of the term, the annual contract quantity was to be 14,000,000mmbTU for each contract year, adjusted pro-rata for the first contract year

and the final one. In this respect, it was noted that the first contract year was to commence on 14 March 2017 and terminate on 30 September 2017, whereas the final contract year was to start on the 1 October preceding the end of the term and terminate on the expiry of the term.

7.1.9 The Agreement provided for adjustments to be made to the annual contract quantity. In particular, this quantity was to be adjusted for any:

- a. positive quantities (the total quantity delivered being higher than the adjusted annual contract quantity) carried forward from the previous contract year (or the Early Gas Period) were to be reduced from the annual contract quantity for the following contract year, and any such negative quantities (the total quantity delivered being less than the adjusted annual contract quantity) were to be added to the subsequent contract year's annual contract quantity;
- b. optional increases of up to 2,000,000mmBTU requested by ElectroGas Ltd;
- c. extra cargoes due to deficiencies in quantities delivered or taken in line with the Agreement, planned for delivery during that contract year; and
- d. additional cargo agreed to by Socar Trading SA and ElectroGas Ltd in line with the provisions of the Agreement. Socar Trading SA was to have the preferential right to negotiate (not applicable in relation to quantities required by ElectroGas Ltd to replace quantities which Socar Trading SA failed to supply or for off-specification LNG) with ElectroGas Ltd for an exclusive period of up to three weeks for each spot cargo of LNG requested by ElectroGas Ltd. However, there was no obligation to complete such an agreement. The basis for the price of such additional cargo was to be the arm's length market price for the delivery of a spot cargo of LNG in the Mediterranean at the specific date and time of delivery at the gas receiving facilities, accounting for other agreed material terms, shipping costs and other relevant operational or administrative costs and expenses.

7.1.10 The LNG SPA also regulated the annual delivery programme, that is, the schedule of deliveries during a contract year. The Agreement outlined the:

- a. basis of the structuring of this programme;
- b. information to be exchanged between Socar Trading SA and ElectroGas Ltd to enable the compilation of the programme, including whether ElectroGas Ltd was exercising its entitlement to increase the annual contract quantity;
- c. information which the annual delivery programme was to comprise; and
- d. requirements in relation to this programme, including the requirement that the LNG stock in the receiving terminal was not to fall below 10,000m³ excluding the technical minimum quantity required to be kept.

The Agreement also regulated the issuance of a specific delivery schedule to be submitted by Socar Trading SA to ElectroGas Ltd, outlining a three-month forward plan for the deliveries of LNG as shown in the latest annual delivery programme and/or as amended pursuant to the LNG SPA. The Agreement specified the information that was to be included in the specific delivery schedules and amendments thereto.

- 7.1.11 Changes made in respect of these documents were also regulated. Socar Trading SA was entitled, following the issuance of the annual delivery programme for a contract year, to substitute the facilities utilised by it to fulfil its obligations in respect of a cargo and/or an LNG vessel for a cargo nominated in the latest annual delivery programme or specific delivery schedule. Such amendments were subject to ship-shore compatibility. Socar Trading SA was to adjust the specific delivery schedule to reflect the amendments made, provided that the scheduled arrival window did not change except by mutual agreement, and also adjust within it any resulting change to the quantity of LNG expected to be unloaded, and reissue the revised specific delivery schedule to ElectroGas Ltd. A scheduled arrival window was defined as the period of 72 hours set out in the latest annual delivery programme or specific delivery schedule for the relevant cargo, as applicable, within which an LNG vessel was scheduled to arrive and a notice of readiness to berth and discharge LNG was issued.
- 7.1.12 The LNG SPA provided for ElectroGas Ltd to request carry cargoes and diversion cargoes (delivered at an alternative discharge port at mutually agreed terms) if all or any portion of the adjusted annual contract quantity that Socar Trading SA was obliged to deliver was not delivered or not taken by ElectroGas Ltd. Such a request was to be made when compiling the annual development programme of the subsequent contract year. Such cargoes would be scheduled for delivery in the adjusted annual contract quantity of the applicable contract year. In the case of a carry cargo, the LNG SPA specified that this would be scheduled following the request by ElectroGas Ltd unless Socar Trading SA was unable to deliver it due to operational reasons declared for concerns over security of supply. The LNG SPA further stipulated that ElectroGas Ltd had an option to request carry cargoes in any contract year following any contract year (or the Early Gas Period) in which the delivery did not occur because Socar Trading SA did not deliver. This option was on condition that in the final contract year the parties were to discuss how to manage any outstanding quantities not delivered by Socar Trading SA. If any carry cargoes were still to be scheduled by Socar Trading SA by the date of issue of the annual delivery programme for the final contract year, then Socar Trading SA was to pay ElectroGas Ltd the total of the cumulative quantities represented by such carry cargoes at the LNG Price applicable when the deficiency in the delivery arose. This amount was capped at 35 per cent of the quantity not delivered multiplied by an LNG price equal to 14 per cent Brent applicable on the last day of the scheduled arrival window for the relevant cargo.
- 7.1.13 The Agreement specified the price of LNG sold and delivered under the LNG SPA. This price was to be determined in euro per mmBTU. Figure 37 outlines the LNG Price during the Early Gas Period, the Fixed Price Period and the Indexed Price Period.

Figure 37: LNG price as per LNG SPA

Supply period	Payment
Early Gas Period	13.85 per cent Brent per mmbTU. ¹
Fixed Price Period	Annual contract quantity at €9.40 per mmbTU; optional increases up to 2,000,000mmbTU requested by ElectroGas Ltd at 13.85 per cent Brent.
Indexed Price Period	Annual contract quantity at 14 per cent Brent; optional increases up to 2,000,000mmbTU requested by ElectroGas Ltd at 14 per cent Brent.

Note:

1. The LNG SPA further included provisions relating to the adoption of a replacement index should the Brent index cease to be published or be a reliable representation of the commodity.

7.1.14 Also regulated in the LNG SPA was the payment of taxes by ElectroGas Ltd and Socar Trading SA. ElectroGas Ltd was to pay taxes and charges in respect of the purchase or import of LNG under this Agreement or on any income resulting from its purchase or import of such LNG. Meanwhile, Socar Trading SA was to pay taxes and charges in connection with the sale, transportation or export of LNG under this Agreement or on any income received from the sale, transportation or export of such LNG. All amounts or values listed in the Agreement were exclusive of Value Added Tax (VAT). If applicable, VAT or similar taxes were to be paid by the recipient of the goods/ services/LNG unless otherwise specified in the Agreement; however, Socar Trading SA was to apply for a tax exemption, zero percent rates or any other tax facility applicable where legally possible. If ElectroGas Ltd was the recipient, it was not required to pay Socar Trading SA any VAT or similar taxes except those chargeable under Maltese tax legislation. The procedure with respect to the payment of withholding tax by any party was also outlined in the Agreement.

- 7.1.15 The Agreement also regulated matters in relation to invoicing and payments, among others:
- a. when provisional and final invoices could be submitted;
 - b. the details to be included therein;
 - c. when invoices were to become due and payable;
 - d. late payment interest;
 - e. contestations and modifications of invoices;
 - f. the procedure in case of non-payment of amounts due by ElectroGas Ltd to Socar Trading SA, including the possible suspension of delivery of LNG cargoes; and
 - g. the procedure in case of non-payment of amounts due by Socar Trading SA to ElectroGas Ltd, including the potential suspension of receipt of future cargoes.

Provisions in relation to invoicing and payments were to remain in effect following the expiry or termination of this Agreement until payment was settled for all amounts accrued as at the expiry or termination.

Chapter 7

7.1.16 Deficiencies in the quantities delivered or taken in line with the LNG SPA could be either due to the seller's failure to supply or the buyer's failure to take. In the former case, the LNG SPA noted that the following events were not to be considered a failure to supply:

- a. a force majeure;
- b. severe weather conditions impeding the LNG ship from berthing, unloading or departing from the Marsaxlokk Port;
- c. breaches by ElectroGas Ltd; and
- d. faults by the operator of the gas receiving facilities.

7.1.17 In any other case where Socar Trading SA failed to deliver all or part of the cargo scheduled in the specific delivery schedule (which was not within a cargo quantity tolerance limit established in the Agreement), ElectroGas Ltd was entitled to issue a notice informing Socar Trading SA of the failure to deliver and the amount of undelivered LNG. ElectroGas Ltd and Socar Trading SA were to seek to mitigate such failure within deadlines set in the Agreement or by a mutually agreed timeframe. When issuing this notice, ElectroGas Ltd would not be obliged to take the quantity of LNG not delivered by Socar Trading SA. Furthermore, subsequent to the provision of such notice, ElectroGas Ltd could elect to:

- a. demand a carry cargo within 48 hours ;
- b. consent to a proposed change to the current or a subsequent delivery schedule in line with the LNG SPA relating to the deficiency quantity of LNG and withdraw the delivery failure notice issued; or
- c. notify Socar Trading SA that it would be liable to pay ElectroGas Ltd's direct, reasonable, and actual documented costs and losses resulting from the deficiency quantity of LNG. ElectroGas Ltd was to seek to mitigate these costs, provided that such payment was capped as per Figure 38. If exercised, this was to be ElectroGas Ltd's only remedy.

7.1.18 The LNG SPA specified that where the circumstances resulting in a notice regarding Socar Trading SA's delivery failure arose from wilful non-delivery by Socar Trading SA, ElectroGas Ltd's only remedy in damages was to be the seller deficiency payment. This payment was to be capped at the product of the quantity of LNG not delivered and an LNG price equal to 14 per cent Brent applicable on the last day of the scheduled arrival window for the relevant cargo.

7.1.19 The LNG SPA included provisions in relation to the sourcing of cargoes of comparable quantities of LNG as a replacement for the cargo Socar Trading SA failed to deliver following the issue of notice to this effect. In particular, Socar Trading SA was to seek to source a cargo of a similar quantity of LNG, which ElectroGas Ltd could accept or refuse.

Figure 38: Seller deficiency payment capping

Period	Delivery	Payment capping
Early Gas Period		35 per cent of the quantity of LNG not delivered multiplied by the LNG price equal to 13.85 per cent Brent applicable on the last day of the scheduled arrival window of the relevant cargo.
Fixed Price Period	Annual Contract Quantity	The quantity of LNG not delivered multiplied by the sum of (i) 35 per cent of an LNG price equal to 13.85 per cent Brent applicable on the last day of the scheduled arrival window for the relevant cargo and (ii) the 13.85 per cent Brent applicable on the last day of the scheduled arrival window, less the fixed price (€9.40).
Fixed Price Period	Optional increases up to 2,000,000 mmBTU	35 per cent of the quantity of LNG not delivered multiplied by the LNG price equal to 13.85 per cent Brent applicable on the last day of the scheduled arrival window of the relevant cargo.
Indexed Price Period		35 per cent of the quantity of LNG not delivered multiplied by an LNG price equal to 14 per cent Brent applicable on the last day of the scheduled arrival window for the relevant cargo.

7.1.20 Having addressed instances where Socar Trading SA failed to supply, the LNG SPA also provided for possible failure to take or purchase by ElectroGas Ltd. In this respect, noted in the LNG SPA was that the following situations were not to be considered as deficiencies in such quantities:

- a. a force majeure;
- b. severe weather conditions impeding the LNG ship from berthing, unloading or departing from the port of Marsaxlokk;
- c. breaches by Socar Trading SA;
- d. fault of the transporter, that is, the contracted provider/operator of the LNG vessel, or the operator of the facilities utilised by Socar Trading SA; and
- e. where ElectroGas Ltd refused a cargo due to it being off specification, in line with the provisions of the LNG SPA.

7.1.21 Bar the above, Socar Trading SA could notify ElectroGas Ltd of the failure to receive and the quantity of LNG not received by ElectroGas Ltd for all other reasons. Socar Trading SA could also issue such notice when a force majeure declared by ElectroGas Ltd resulted in its inability to take half of the annual contract quantity for the duration of the Indexed Price Period in two consecutive contract years. On the issue of such notice, Socar Trading SA would not be obliged to deliver to ElectroGas Ltd the quantity of LNG not received and could cause the LNG vessel to depart the Marsaxlokk Port. Furthermore, ElectroGas Ltd would not be liable to Socar Trading SA for demurrage costs after the earliest time at which Socar Trading SA could reasonably have caused the LNG vessel to depart. Following receipt of this notice, ElectroGas Ltd was to request

a re-scheduled cargo for delivery of LNG not taken, resulting in the notice to be withdrawn, or to request a cargo to be delivered to an alternative port. In the event that Socar Trading SA did not comply with the former request and in case of the latter request, ElectroGas Ltd was to pay Socar Trading SA a buyer deficiency payment, equal to the product of the LNG quantity not received and the LNG price applicable on the last day of the cargo's scheduled arrival window. These solutions were Socar Trading SA's only remedy.

7.1.22 Also noted in the LNG SPA was that Socar Trading SA was to seek to sell the quantity of LNG not taken by ElectroGas Ltd. This sale was to maximise the total proceeds received by Socar Trading SA from the sale of LNG less the amount by which the fees, duties, taxes and cost of sales incurred for the sale and delivery to the third party exceeded the corresponding costs if ElectroGas Ltd had taken the cargo at the Marsaxlokk Port. Any surplus beyond the amount payable by ElectroGas Ltd to Socar Trading SA in terms of the buyer deficiency payment was to be distributed equally between the two parties if the quantity which failed to be taken arose due to security of supply issues or due to insufficient LNG storage tank space in the LNG receiving terminal at the Marsaxlokk Port. However, it was to be wholly taken by Socar Trading SA in any other case. However, further noted in the LNG SPA was that where ElectroGas Ltd failed to take delivery intentionally, the statement outlined above still applied bar the fact that any payment from a third party pursuant to the sale of the unaccepted LNG was to be due to Socar Trading SA. The LNG SPA also included provisions with respect to ElectroGas Ltd requesting Socar Trading SA to sell any LNG stock in the LNG receiving terminal at the Marsaxlokk Port. In this case, Socar Trading SA was to seek to maximise the total proceeds received from the sale of LNG less the amount by which the fees, duties, taxes and cost of sales incurred by Socar Trading SA in connection with the sale and delivery of the LNG to the third party exceeded zero. The net proceeds were to be passed on to ElectroGas Ltd and both parties were to agree on a commission payable to Socar Trading SA for each such sale.

7.1.23 The Agreement further included provisions regarding the quality of the LNG. Stipulated was the fact that the LNG delivered was to meet the specifications provided in the Agreement. A notice was to be submitted by Socar Trading SA to ElectroGas Ltd outlining the quality of the LNG loaded.

7.1.24 If either ElectroGas Ltd or Socar Trading SA established, prior to unloading, that an LNG cargo was expected to be off-specification, then a notice was to be sent as soon as practicable but before the unloading took place, specifying the extent of the expected variance. ElectroGas Ltd and Socar Trading SA were to discuss such variance and potential mitigating actions, subject to ElectroGas Ltd discussing with the operator of the facilities receiving LNG whether the off-specification LNG could be accepted and/or treated. The discussion on the variance and potential mitigating actions was also subject to the fact that, as soon as possible, but within 36 hours after becoming aware that the LNG was expected to be off-specification, ElectroGas Ltd was to notify Socar Trading SA whether it was refusing the cargo or willing to accept all or any of it. The Agreement stipulated that, should the LNG quality not be materially consistent

with the expected variance notified, then ElectroGas Ltd would be permitted to reject all or part of such LNG notwithstanding any initial acceptance. If ElectroGas Ltd accepted the off-specification LNG, then ElectroGas Ltd was to supply Socar Trading SA an estimate of the losses that were going to be sustained due to the receipt and treatment of the off-specification LNG. Socar Trading SA could decide whether to accept such costs within 24 hours. In the affirmative, ElectroGas Ltd would accept the LNG and Socar Trading SA would reimburse the losses incurred, capped at the estimate provided.

7.1.25 If the off-specification was first discovered subsequent to the commencement of the unloading of the LNG cargo, then a similar notification as in the case of the off-specification being discovered prior to the unloading of the LNG was to be made. Subject to any decision by ElectroGas Ltd to accept the off-specification LNG, both parties were entitled to suspend unloading. ElectroGas Ltd was to be considered to have accepted all the LNG unloaded prior to any suspension, and Socar Trading SA was to reimburse ElectroGas Ltd all losses incurred due to its receipt, treatment and/or acceptance of the off-specification LNG. In this case, Socar Trading SA's liability could not exceed 120 per cent of the value of the off-specification LNG delivered. Should ElectroGas Ltd choose to accept any off-specification LNG still not unloaded prior to suspension, then the provisions in case of the acceptance of off-specification LNG discovered prior to unloading applied. If ElectroGas Ltd refused to take the delivery of any off-specification LNG, then Socar Trading SA was to be deemed to have failed to make available the quantity of off-specification LNG rejected by ElectroGas Ltd and ElectroGas Ltd was entitled to issue a seller delivery failure notice.

7.1.26 Stipulated in the LNG SPA were provisions regulating various aspects of measurement and testing to be conducted. Outlined were the devices that each party was to, or cause to supply, operate and maintain. Also stipulated were procedures and requirements in relation to the:

- a. selection of the devices to be utilised for measurement and testing;
- b. measurement units;
- c. gauging and measuring the LNG volumes unloaded;
- d. sampling for quality analysis and retained samples;
- e. calculating the quantity of LNG sold and delivered;
- f. operations; and
- g. testing, calibrating and verification of the accuracy of the devices.

7.1.27 The Agreement also regulated the costs and expenses of tests and verifications. The cost of tests, calibration or verification carried out prior to utilisation were to be borne by the party

whose devices were being tested and verified. Costs in relation to the inspection and any further tests, re-calibrations and verifications were to be borne by the party requesting testing. However, if testing resulted in any inaccuracies, the party whose devices were being inspected, tested, re-calibrated or verified was to pay. Costs, fees and charges of independent surveyors for verification of measurements and calculations were to be borne equally by Socar Trading SA and ElectroGas Ltd. Representatives of parties attending tests and verifications were to do so at the cost and risk of the party they represented.

7.1.28 The LNG SPA further delved into matters relating to termination. Essentially, three scenarios for termination were outlined:

- a. Buyer termination events, where Socar Trading SA could terminate because:
 - i. ElectroGas Ltd failed to pay by the due date a sum of €10,000,000 or more and did not correct such failure within 30 days of the receipt of notice from Socar Trading SA and within any further period provided in the LNG SPA Direct Agreement, which cumulatively could not surpass sixty days;
 - ii. of certain specified scenarios listed in the Agreement, such as the suspension of payment of at least a substantial part of ElectroGas Ltd's debts, if an order was issued for the winding-up, administration or liquidation of ElectroGas Ltd, or if any similar event occurred pursuant to any bankruptcy, insolvency, or receivership or similar laws of any applicable jurisdiction;
 - iii. ElectroGas Ltd was in breach of certain provisions stipulated in the LNG SPA, including its authority to enter into, perform obligations, discharge its liabilities under the LNG SPA and its compliance with all laws and requirements including those relating to anti-bribery and anti-money laundering applicable to the performance of the LNG SPA; and
 - iv. ElectroGas Ltd was in breach of provisions relating to the assignment or transfer of its obligations under the Agreement or if there was a change of control in ElectroGas Ltd's securities, bar for certain circumstances specified in the Agreement, resulting in Socar Trading SA's internal KYC and/or compliance requirements necessitating termination of the Agreement.
- b. Seller termination events, where ElectroGas Ltd could terminate because:
 - i. Socar Trading SA did not pay by the due date for payment a sum of €10,000,000 or more and did not remedy such failure within 30 days of the receipt of notice from ElectroGas Ltd;
 - ii. of certain specified scenarios listed in the Agreement, such as the suspension of payment of at least a considerable part of Socar Trading SA's debts, or if an order be made for the winding-up, custodianship or liquidation of Socar Trading SA or any similar event occurring under the laws of any applicable jurisdiction;
 - iii. Socar Trading SA has failed to deliver, except for cases such as a force majeure, severe weather conditions impeding the LNG vessel from berthing, unloading or departing from the port of Marsaxlokk, and breaches by ElectroGas Ltd or a fault by the operator of the gas receiving facilities, at least 50 per cent of the adjusted annual contract in any two consecutive contract years, or 75 per cent of such adjusted annual contract quantity

- in any contract year;
- iv. Socar Trading SA was in breach of certain provisions in the LNG SPA, including:
 1. its authority to enter into, perform obligations, and discharge its liabilities under the LNG SPA;
 2. its title to the delivered LNG and its ability to transfer such title;
 3. the fact that the LNG was to be free from any third party interests;
 4. its compliance with all laws, regulations, rules and requirements, including those relating to anti-bribery and anti-money laundering, applicable to the performance of the LNG SPA, and its compliance in relation to the requirements relating to documentation in order to assure such compliance; and
 5. the origins of the LNG made available to ElectroGas Ltd, which was not to be from a country subject to United Nations, United States of America, EU or Swiss economic sanctions in respect of the supply or transport of gas – however, natural gas from a sanctioned country which was mixed with natural gas from a non-sanctioned country in a transmission system which was upstream of Socar Trading SA's facilities was not to be considered as gas originating from a sanctioned country; and
 - v. Socar Trading SA was in breach of provisions relating to the assignment or transfer of its obligations under the Agreement or there was a change of control in the ownership of its securities, representing more than 50 per cent of the combined voting power of Socar Trading SA's outstanding securities then having the right to vote at elections of directors and/or at an annual general meeting;
 - vi. Socar Trading SA failed to execute the LNG SPA Direct Agreement by 14 October 2016 or such later date requested by ElectroGas Ltd, or, as a result of its own act or omission, failed to maintain or comply with the LNG SPA Direct Agreement; or
 - vii. Socar Trading SA failed to execute the Shell Direct Agreement once executed by Shell, or because of its own act or omission, failed to comply with this Agreement. Enemalta was not privy to this Agreement between Shell and Socar Trading SA.
- c. Automatic termination if ElectroGas Ltd was notified on or prior to 20 June 2015 that Enemalta wanted to terminate the GSA, with no liability to either party. If a notice relating to an accelerated GSA exit was issued to ElectroGas Ltd, its rights and obligations under the LNG SPA were to be novated to Enemalta.
- 7.1.29 With respect to the first two reasons for termination, the termination party could either terminate the Agreement after 10 days from a notice given, unless the cause for termination had been fully resolved or ceased to apply, or enforce any existing security it possessed. With respect to breaches in respect of anti-bribery laws, regulations, rules and requirements, the Agreement could be terminated within 30 days of written notice. In the case of termination, the Agreement provided for claims to losses and damages suffered. In the case of ElectroGas Ltd, during the Fixed Price Period, the claim for losses and damages suffered was to only include the payment of the excess cost and losses incurred by ElectroGas Ltd to source replacement LNG equal to the annual contract quantity for the remaining time in the Fixed Price Period.

Socar Trading SA's liability with respect to such period was capped at the product of the annual contract quantity for the remaining time of the Fixed Price Period and 35 per cent of an LNG price equal to 13.85 per cent Brent applicable on the day of termination plus 13.85 per cent Brent applicable on the day of termination minus the fixed price.

7.1.30 The LNG SPA stipulated that Socar Trading SA was to procure that Shell executed the Shell Direct Agreement by 14 October 2016, or on such later date as requested by ElectroGas Ltd. The LNG SPA also cited provisions for inclusion in the Shell Direct Agreement, among others, matters relating to:

- a. the delivery by Shell to the offshore security trustee, the notices and demands made by it to Socar Trading SA;
- b. provisions in relation to the remedy of defaults;
- c. entry by Shell into a replacement LNG SPA with the offshore security trustee, ElectroGas Ltd or its substitute, if the existing LNG SPA between Shell and Socar Trading SA was terminated, or novation of the existing LNG SPA to the offshore security trustee, ElectroGas Ltd or its substitute, instead of termination;
- d. assignment of the Agreement; and
- e. replacement of the direct agreement.

7.1.31 The LNG SPA also provided dispute resolution procedures to be adhered to in the event of any controversy, disagreement or dispute between the parties in the performance, interpretation or application of the Agreement. Where the Agreement provided for expert determination in relation to any matter, neither party was entitled to refer the dispute to arbitration. An expert's decision was final and binding on the parties. Nonetheless, the LNG SPA provided that either party could refer the subject matter of the expert's decision to arbitration. In this case, notice was to be given to the other party within 30 days of the expert's decision. If referred to arbitration, the decision of the expert was to be considered final and binding pending any arbitral award to the contrary. Additionally, the LNG SPA included provisions relating to arbitration. It was noted that any arbitration between the parties was to be held and settled in London, and was to be conducted in accordance with the rules of the International Chamber of Commerce in force when the arbitration began. An arbitral tribunal was to be composed of three arbitrators. Each of the parties was to nominate an arbitrator and the two nominated arbitrators were to jointly propose the third, who was to be Chair. The award of the arbitral tribunal was to be final and binding on the parties.

7.1.32 The LNG SPA restricted ElectroGas Ltd's and Socar Trading SA's ability to assign or transfer the Agreement or any rights and/or obligations emanating therefrom. Both parties required the prior written consent of the other in order to do so; however, the LNG SPA stipulated that such consent was not to be unreasonably withheld. In this case, the transferee was to have

sufficient financial and technical capability to exercise the rights and perform the obligations (if these were being transferred) reasonably and on satisfaction of the non-transferring party's established internal KYC requirements. It was also stipulated that Socar Trading SA could assign to an affiliate the benefit of the whole or part of the Agreement. Assignment and novation could also be made pursuant to the terms of the LNG SPA Direct Agreement.

7.1.33 The Agreement also regulated the liabilities of the parties to one another. These were to be limited to direct costs, losses or damages, subject to a number of provisions. Measures in respect of the maintenance of standards of safety in relation to the construction and operation of Socar Trading SA and ElectroGas Ltd's facilities, the LNG vessel and the transportation of LNG were stipulated. A safety provision was also included in the Agreement with respect to third parties, such as the parties' employees, agents, operators, transporter, contractor and third party suppliers.

Enemalta – LNG SPA Direct Agreement

7.1.34 Enemalta, Socar Trading SA and ElectroGas Ltd entered into the Enemalta-LNG SPA Direct Agreement on 13 April 2015. The term of this Agreement was to extend until the date of termination of the LNG SPA. Acknowledged in the Enemalta-LNG SPA Direct Agreement was that ElectroGas Ltd had agreed to provide a long-term supply of electricity and gas to Enemalta pursuant to the IA among others. In order to perform its obligations, ElectroGas Ltd entered into a long-term LNG SPA with Socar Trading SA for the shipment of LNG to its facilities. Enemalta, ElectroGas Ltd and Socar Trading SA entered into the Enemalta-LNG SPA Direct Agreement to ensure that, should certain circumstances materialise which result in the termination of the LNG SPA or the IA, Enemalta may be assigned and novated the LNG SPA.

7.1.35 Specified in the Enemalta-LNG SPA Direct Agreement were provisions regulating the process of notification to be followed in the event of termination of the LNG SPA. According to the Agreement, if Socar Trading SA issued an LNG SPA Termination Notice to ElectroGas Ltd, then Socar Trading SA was to immediately notify Enemalta to this effect. On the other hand, ElectroGas Ltd was to notify Socar Trading SA if any Termination Notice was issued by Enemalta with respect to the IA.

7.1.36 The Enemalta-LNG SPA Direct Agreement outlined the procedure that was to be followed should a trigger event occur, that is, if following the issuance of a termination notice, the relevant default was not remedied within the cure period available to ElectroGas Ltd or any third party as the case may be. In this case, Socar Trading SA was to notify Enemalta and ElectroGas Ltd, through a trigger notice, that a trigger event had occurred, and specify all amounts outstanding, payable or in default by ElectroGas Ltd to Socar Trading SA pursuant to the LNG SPA, which were undischarged as at the date of the notice. The outstanding dues were to exclude amounts relating to any liability resulting from the termination of the LNG SPA.

7.1.37 Detailed provisions relating to the novation of the LNG SPA to Enemalta were stated in the Enemalta-LNG SPA Direct Agreement. According to this Agreement, subsequent to the issuance of a termination notice or a trigger notice, Enemalta could give written notice to Socar Trading SA specifying that, on the novation date, the rights and obligations of ElectroGas Ltd emanating from the LNG SPA were to be assigned and novated to Enemalta. The novation date was specified as the date of termination of the IA or a later date determined in accordance therewith. Socar Trading SA undertook not to terminate the LNG SPA prior to the novation date provided that all outstanding amounts, bar amounts relating to any liability resulting from the termination of the LNG SPA, were settled in full and no notice of assignment or novation of the LNG SPA was received from a third party by Socar Trading SA. Assignment and novation of the LNG SPA could also take place if Enemalta terminated the GSA through an Accelerated GSA Exit. Under this scenario, such assignment and novation was to take effect on the GSA Exit Date, or on a later date determined in accordance with the IA. Similar provisos regarding the payment of outstanding amounts and notice by third parties applied.

7.1.38 On and from the novation date or the GSA Exit novation date, Enemalta would assume the rights and obligations of ElectroGas Ltd in accordance with the terms of the LNG SPA and would replace ElectroGas Ltd as principal debtor of the latter's obligations and liabilities towards Socar Trading SA pursuant to the LNG SPA at any time. Furthermore, as from the novation date or the GSA Exit novation date, Socar Trading SA would be released from all obligations and liabilities towards ElectroGas Ltd; conversely, ElectroGas Ltd would be released and discharged from all obligations and liabilities by Socar Trading SA. The Enemalta-LNG SPA Direct Agreement also stipulated that subsequent to the novation date, Socar Trading SA was not to take any enforcement action with respect to events or circumstances taking place before such date, provided that on or prior to such date, all outstanding amounts, bar any liabilities resulting from the termination of the LNG SPA, were settled in full.

FSU Conversion and Charter Agreement

7.1.39 The FSU Conversion and Charter Agreement was entered into by ElectroGas Ltd, as the charterer, and Armada Floating Gas Storage Malta Ltd, the vessel owner, on 13 April 2015. Through this Agreement, ElectroGas Ltd hired the converted FSU from Armada Floating Gas Storage Malta Ltd for use and service in accordance with the terms stipulated therein. ElectroGas Ltd was to charter the FSU for 18 years and two months from the date on which it formally accepted the FSU following its conversion. ElectroGas Ltd formally accepted the FSU on 3 April 2017. In turn, the charter period was to terminate when ElectroGas Ltd delivered the FSU to Armada Floating Gas Storage Malta Ltd at the Delimara terminal at the end of the charter period, unless the FSU was purchased by ElectroGas Ltd or deemed a constructive or actual total loss, in which case the provision would not apply. On the termination date, Armada Floating Gas Storage Malta Ltd was to remove the FSU from the terminal.

7.1.40 The Agreement stipulated the payments to be made for the use and hire of the FSU and the procedure for payment. Within ten days from the date of the FSU Conversion and Charter

Agreement, Electrogas Ltd was to pay Armada Floating Gas Storage Malta Ltd an upfront fee of US\$3,625,000. In addition, ElectroGas Ltd was to pay a daily rate in US Dollars, pro rata for any part thereof, for the utilisation and hire of the FSU. This payment was due from the earlier of the first LNG Date or the acceptance date of the FSU by ElectroGas Ltd. The first LNG Date was to be established as the later of the date on which the FSU passed an initial functional test or the date of the scheduled delivery of the FSU by Armada Floating Gas Storage Malta Ltd, set at 13 June 2016. Payments would cease on return of the FSU to Armada Floating Gas Storage Malta Ltd at the end of the charter period, unless ElectroGas Ltd purchased the FSU or the FSU was deemed a constructive or an actual total loss. The daily rate of hire comprised a fixed charter hire fee of US\$32,000, exclusive of VAT and import duties. This amount was to be adjusted for increases in certain taxes. Armada Floating Gas Storage Malta Ltd was to issue an invoice to ElectroGas Ltd for the hire payment on the fifth day of each month during the charter period. Deductions in respect of any off-hire period were to be made. An off-hire period was defined as a period wherein the FSU did not perform at the minimum performance levels specified in the Agreement due to a reason attributable to Armada Floating Gas Storage Malta Ltd, Armada Floating Gas Services Malta Ltd or their contractors, bar for up to 72 hours per 12-month period. On each occasion, ElectroGas Ltd was to charge the bunkers consumed during off-hire periods on a first-in-first-out basis. Furthermore, Armada Floating Gas Storage Malta Ltd was to pay ElectroGas Ltd any sums to which it was entitled as per the Agreement within five days of receipt of an invoice. The Agreement also provided for late payment interest.

7.1.41 Stated in the FSU Conversion and Charter Agreement was that Armada Floating Gas Storage Malta Ltd was incorporated exclusively to buy, own, convert and charter the FSU. It was noted that Armada Floating Gas Storage Malta Ltd was to embark on works to modify the FSU in order for it to fulfil the agreed specifications set out in the Agreement, which modifications were to be completed on or prior to 13 June 2016. However, this date could be revised from time to time pursuant to the Agreement. A monthly report in relation to the status of the works and a monthly construction report were to be submitted by Armada Floating Gas Storage Malta Ltd to Electrogas Ltd. The reports were to contain an update on the progress of the conversion works with reference to an agreed schedule of key dates. Furthermore, the Agreement stipulated that should there be any delay in the conversion works, Armada Floating Gas Storage Malta Ltd was to submit to Electrogas Ltd a remedial plan outlining mitigation measures intended to offset the consequences of such delay.

7.1.42 The FSU Conversion and Charter Agreement also provided for inspections, testing and trials to be carried out until the shipyard equipment test, and for inspections to be undertaken between such test and the acceptance date of the FSU by ElectroGas Ltd. The shipyard equipment test comprised a number of tests that were to be conducted by the party undertaking the conversion works. This testing was intended to ensure that the FSU was in line with the equipment manufacturer’s recommendations and with an internationally recognised classification society. If the FSU failed the test, Armada Floating Gas Storage Malta Ltd was to present a remedial plan to ElectroGas Ltd within five banking days, providing for a repeat of the test. The Agreement also stipulated that Armada Floating Gas Storage Malta Ltd was to develop testing protocols for

the FSU tests in line with the principles set out in the Agreement. ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd were to agree to and conclude these testing protocols by 13 March 2016. The FSU tests were to be carried out at the Delimara terminal at Armada Floating Gas Storage Malta Ltd's expense; however, ElectroGas Ltd was responsible for the provision of an agreed quantity of LNG and for the terminal interface, details of which were specified in the Agreement. Additionally, the Agreement restricted the FSU's voyages following the commencement of the conversion works to those in relation to tests and trials, as well as those permitted under the Agreement.

7.1.43 The FSU Conversion and Charter Agreement further stipulated that Armada Floating Gas Storage Malta Ltd was to enter into an Interface Agreement with, among others, ElectroGas Ltd and URS Infrastructure & Environment UK Limited. It was noted that the Interface Agreement was to be amended so as to render it consistent with the schedule through which Armada Floating Gas Storage Malta Ltd was to interface with the project.

7.1.44 Provisions were also made with respect to variations to the Agreement and related aspects, including:

- a. variation requests by ElectroGas Ltd with respect to the conversion works, the FSU or its specifications;
- b. variation requests by Armada Floating Gas Storage Malta Ltd in relation to an event causing changes in the time and/or costs of the conversion works;
- c. the method with which such requests could be made;
- d. information relating to the approval or rejection of variations;
- e. Armada Floating Gas Services Malta Ltd's variation entitlements;
- f. the principles for preparing a proposal for variation, particularly in relation to the cost of implementation of such variation;
- g. disputed variations with respect to the costs and/or the impact of the change on the project schedule;
- h. the keeping of a variation log;
- i. a list of amendments that could not be granted as variations;
- j. variations in relation to the spread mooring system being developed; and
- k. the capping of variations.

7.1.45 The Agreement also outlined the procedure with respect to the delivery and installation of the FSU by Armada Floating Gas Storage Malta Ltd and other matters in relation to the process leading up to it. The delivery of the FSU at the Delimara terminal was to take place on the scheduled delivery date. Armada Floating Gas Storage Malta Ltd was to either notify ElectroGas Ltd by at least 30 days prior to this date that the FSU delivery would take place as scheduled or inform ElectroGas Ltd of the actual date of delivery. In addition, Armada Floating Gas Storage Malta Ltd was to inform ElectroGas Ltd when the FSU passed the final shipyard equipment test and any other required tests/procedures and was therefore ready to sail to the Delimara terminal. On the FSU's arrival at the terminal, Armada Floating Gas Storage Malta Ltd was to submit a notice of readiness for delivery, and was to deliver the FSU afloat and moored to the jetty. In the meantime, ElectroGas Ltd was to have effected the required preparations to the terminal and acquired all the permits and licences necessary for the installation and operation of the FSU. Moreover, the FSU Conversion and Charter Agreement set out the parties' obligations following the delivery date. The Agreement specified that there existed the possibility of an agreement between ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd to terminate the Agreement should the delivery date not occur by 11 October 2016.

7.1.46 The FSU Conversion and Charter Agreement specified the payments due in relation to the delivery of the FSU. If the FSU's delivery took place before the scheduled delivery date, ElectroGas Ltd was to pay Armada Floating Gas Storage Malta Ltd US\$20,000 for every day the delivery date preceded that scheduled, up to a maximum of US\$100,000. This amount was payable only if the FSU passed the first initial functional test, details of which were included in the Agreement. If the FSU was delivered after 18 June 2016, Armada Floating Gas Storage Malta Ltd was to pay ElectroGas Ltd liquidated damages. Such damages were payable for each day of delay, bar with respect to delays caused by a force majeure or breaches of ElectroGas Ltd's obligations under this Agreement. Liquidated damages for delays were set at US\$20,000 for every full day of delay, up to a maximum of US\$2,300,000. Furthermore, if Armada Floating Gas Storage Malta Ltd was unable to install the FSU due to ElectroGas Ltd's failure to prepare the terminal, ElectroGas Ltd was to pay Armada Floating Gas Storage Malta Ltd the direct costs attributed to this delay and other sums outlined in the Agreement, depending on the duration of the delay. Such payments were to be incurred until ElectroGas Ltd notified Armada Floating Gas Storage Malta Ltd that the terminal was ready to receive the FSU. These costs were also payable if, after the delivery date, Armada Floating Gas Storage Malta Ltd was not able to perform the FSU tests through no fault of its own. If the FSU was delivered early, such delayed payments were not applicable until the occurrence of the scheduled delivery date.

7.1.47 The Agreement further regulated the tests that were to be performed on the FSU following delivery. An initial functional test was to be carried out at Armada Floating Gas Storage Malta Ltd's expense. On successful completion of this test, a first LNG certificate was to be executed and delivered by Armada Floating Gas Storage Malta Ltd and ElectroGas Ltd, recording the:

- a. date on which the FSU passed the initial functional test;

- b. amount of bunkers on board at the time of delivery of the FSU; and
- c. first LNG date.

If the FSU did not pass the initial functional test, Armada Floating Gas Storage Malta Ltd was to submit a remedial plan to ElectroGas Ltd. Armada Floating Gas Storage Malta Ltd could repeat this test until the FSU satisfied the requirements or until ElectroGas Ltd informed it that it was prepared to conduct the performance test.

7.1.48 The performance test was to be requested by ElectroGas Ltd after the scheduled delivery date and entailed the inspection and/or testing of the FSU in accordance with the criteria outlined in the FSU Conversion and Charter Agreement. Armada Floating Gas Storage Malta Ltd was to perform this test at the terminal at its cost, and was to submit the results thereof to ElectroGas Ltd. If the first LNG date would have already occurred, the FSU was to be retained on-hire until it passed or failed this test. If the FSU satisfied the requirements of the performance test, Armada Floating Gas Storage Malta Ltd and ElectroGas Ltd were to execute and deliver a certificate of acceptance stating:

- a. the date on which ElectroGas Ltd formally accepted the FSU; and
- b. the date of the most recent performance test carried out under the Agreement.

7.1.49 If, for reasons exclusively attributable to Armada Floating Gas Storage Malta Ltd, the FSU did not satisfy the requirements of the performance test or such test could not be carried out when requested, ElectroGas Ltd could resort to two options:

- a. Accept the FSU, in which case the parties would execute a certificate of acceptance. Furthermore, the FSU was to remain on-hire and Armada Floating Gas Storage Malta Ltd was to seek to remedy any defects in the FSU's performance and repeat the performance test.
- b. Require Armada Floating Gas Storage Malta Ltd to make the necessary repairs or modifications, or undertake the required works, in order for the FSU to meet the requirements of the performance test. In this case, the FSU was to be off-hire, and Armada Floating Gas Storage Malta Ltd was to submit to ElectroGas Ltd a performance test remedial plan outlining the milestones that Armada Floating Gas Storage Malta Ltd was to achieve at its own cost. The remedial plan was subject to the agreement of ElectroGas Ltd. Provisions were made in case the remedial plan did not permit the FSU to meet the requirements of the performance test, entitling ElectroGas Ltd to utilise the performance test rejection option. In the event of Armada Floating Gas Storage Malta Ltd not achieving any milestone within the timeframe stipulated in the remedial plan, ElectroGas Ltd could opt to instigate the performance test rejection option, given certain other circumstances. Furthermore, if the FSU had not satisfied the performance test within the timeframes stipulated in the

Agreement following the performance test repair option, then ElectroGas Ltd could resort to the performance test acceptance option, the re-election of the performance test repair option, or to reject the FSU. The latter option afforded ElectroGas Ltd the right to require Armada Floating Gas Storage Malta Ltd to remove the FSU from the terminal. Among other terms and conditions in relation to the rejection of the FSU, no hire or other fee was to be due under this Agreement. Furthermore, ElectroGas Ltd could opt to purchase the FSU at a discounted price set in the Agreement. If not, Armada Floating Gas Storage Malta Ltd was to assist ElectroGas Ltd to source a replacement FSU and reimburse it half the upfront fee.

7.1.50 Also stipulated in the FSU Conversion and Charter Agreement were the terms and conditions in relation to bunkers, specifically in terms of the LNG heel (the LNG retained after discharge of cargo), the delivery of the FSU and its redelivery at the end of the charter period. In this respect, ElectroGas Ltd was to accept and pay for all bunkers on board at the time of delivery and reimburse Armada Floating Gas Storage Malta Ltd the direct costs incurred in purchasing such bunkers. On redelivery, Armada Floating Gas Storage Malta Ltd was liable to pay for all bunkers and for any accepted heel remaining on board the FSU. In addition, the Agreement cited requirements relating to the grade of the bunkers supplied and key personnel required for the execution of the conversion works.

7.1.51 Other responsibilities of the parties to the Agreement were outlined. During the charter period, ElectroGas Ltd was to obtain, maintain and pay for all mooring, loading and discharging facilities, applicable environmental permits, as well as other permits and regulatory approvals required by Government for the operation of the FSU at the terminal and for the construction and operation of the LNG receiving terminal in Delimara. ElectroGas Ltd was also responsible for the safe berthing of the FSU at the Delimara terminal, as well as the acquisition, transportation and supply of the LNG required for the construction and operation of the LNG receiving terminal. Furthermore, ElectroGas Ltd was to acquire, ensure the compatibility of, vet and inspect the marine operations in relation to the berthing and unloading of any LNG tankers used to deliver LNG to the FSU. The Agreement also outlined the responsibilities with respect to LNG retention and supply for operational purposes, as well as matters relating to the pilots and tugs required for FSU delivery.

7.1.52 The FSU Conversion and Charter Agreement restricted the assignment and novation of rights and obligations held by Armada Floating Gas Storage Malta Ltd and ElectroGas Ltd under the Agreement without the other party's prior consent. However, Armada Floating Gas Storage Malta Ltd could assign, transfer and/or novate its rights and/or obligations to its affiliates if ElectroGas Ltd was satisfied that the said affiliates could perform the required obligations. On the other hand, ElectroGas Ltd was entitled to assign and novate its rights and obligations only to the project lenders in accordance with the Lenders' Direct Agreement, and to Enemalta in accordance with the FSU – Enemalta Charter Direct Agreement. The Agreement required ElectroGas Ltd to cooperate with Armada Floating Gas Storage Malta Ltd to facilitate the potential financing of the FSU by Armada Floating Gas Storage Malta Ltd through non-recourse project finance, including consenting to the assignment of the Agreement if so required by the FSU financing lenders involved. The Agreement also acknowledged that ElectroGas Ltd,

Armada Floating Gas Storage Malta Ltd and their respective lenders could enter into a single direct agreement governing their relationship.

- 7.1.53 Included in the FSU Conversion and Charter Agreement were provisions with respect to the loss of the FSU, its constructive, actual or compromised total loss, or it being missing for 30 days. In these cases, Armada Floating Gas Storage Malta Ltd and ElectroGas Ltd were to determine whether to continue a charterparty on substantially the same terms as the Agreement, in respect of the provision by Armada Floating Gas Storage Malta Ltd of a replacement FSU, and to negotiate the terms of such charterparty. If the parties did not reach an agreement, either party could give notice and terminate the Agreement. In this case, Armada Floating Gas Storage Malta Ltd was to reimburse ElectroGas Ltd the upfront fee to the extent it could recover the amount paid from the insurance it was to acquire and maintain in line with this Agreement. Armada Floating Gas Storage Malta Ltd was also to remove the FSU from the Delimara terminal at its expense.
- 7.1.54 Also stipulated in the FSU Conversion and Charter Agreement were provisions relating to the dry-docking of the FSU. This included scheduled dry-docking due to ElectroGas Ltd's instructions/requirements or due to a force majeure, or non-scheduled dry-docking for repairs or maintenance other than during a scheduled dry-docking. It was noted that Armada Floating Gas Storage Malta Ltd was responsible for all costs in relation to non-scheduled dry-docking. Armada Floating Gas Storage Malta Ltd also bore responsibility for any work and repairs to the FSU, expenses of gas freeing, including the cost of bunkers incurred in relation to non-scheduled dry-docking. On the other hand, the cost of implementing any scheduled dry-docking were to be incurred by ElectroGas Ltd.
- 7.1.55 Provisions in relation to the prevention of pollution and response in case of an oil pollution incident, including liability for related costs, were also included. The FSU Conversion and Charter Agreement also outlined several codes, requirements and recommendations that were to be simultaneously adhered to. A provision that Armada Floating Gas Storage Malta Ltd had to provide a guarantee from its parent company, while ElectroGas Ltd had to submit a letter of credit, was also cited.
- 7.1.56 Noted in the FSU Conversion and Charter Agreement was that if Enemalta exercised the GSA Exit option, the Agreement would be automatically terminated on the GSA Exit Date. In this case, any hire payment for the FSU that had accrued but had not been paid by ElectroGas Ltd, a termination payment calculated as per the Agreement, and any other amount due to Armada Floating Gas Storage Malta Ltd under this Agreement were to be payable.
- 7.1.57 The FSU Conversion and Charter Agreement also provided for circumstances that could arise in the execution of the Agreement. Among others, the Agreement provided for the terms and conditions that were to be adhered to in case of a force majeure, including an extension to the Agreement. It also provided for conditions relating to material increases or decreases in costs caused by a risk event for Enemalta (such as an expropriation, import restrictions, the closure of harbours, docks and facilities or a relevant change in the law) or by an uninsurable

risk event. It also stipulated instances of default and remedies for such, and outlined the terms and conditions with respect to termination prior to the expiration of the charter period in accordance with any provision of this Agreement or by reason of law. It was noted that if ElectroGas Ltd validly terminated the FSU O&M Agreement, it could give notice to convert this Agreement into a bareboat charter. Furthermore, the dispute resolution procedure that was to be adhered to in case of any controversy, disagreement or dispute arising between the parties in the performance, interpretation or application of the Agreement was also outlined. The Agreement further included provisions in relation to the credit support to be provided by ElectroGas Ltd to Armada Floating Gas Storage Malta Ltd if a termination notice pursuant to the IA was served.

7.1.58 The NAO sought to verify the obligations outlined in FSU Conversion and Charter Agreement in view of its centrality to the project and its possible novation to Enemalta through the FSU – Enemalta Charter Direct Agreement. Enemalta informed this Office that the appendices to the FSU Conversion and Charter Agreement were not made available to it. This limited the NAO from establishing an understanding of the specifications, the schedule of key dates, testing protocols, test details, the interface schedule, obligations following delivery and payments, among others.

FSU – Enemalta Charter Direct Agreement

7.1.59 Enemalta, ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd, as the FSU owner, entered into the FSU – Enemalta Charter Direct Agreement on 13 April 2015. This Agreement provided for the payment of termination costs to Armada Floating Gas Storage Malta Ltd or for Enemalta’s assignment and novation to the FSU Conversion and Charter Agreement should circumstances materialise that result in the termination of the IA.

7.1.60 The FSU – Enemalta Charter Direct Agreement defined termination costs as amounts certain, liquidated, due and payable by Enemalta (or its successors or assignees under the IA) to ElectroGas Ltd, either due to a GSA Exit, or on and from the date of termination of the IA after the Final Effective Date. Such termination costs served as compensation for ElectroGas Ltd’s undischarged liability to Armada Floating Gas Storage Malta Ltd resulting from the early termination of the FSU Conversion and Charter Agreement. These costs were capped at the sum payable to Armada Floating Gas Storage Malta Ltd, in its capacity as contractor, as defined in the IA. Enemalta and ElectroGas Ltd were to notify Armada Floating Gas Storage Malta Ltd if such termination costs became payable. Following such notification, Armada Floating Gas Storage Malta Ltd was to notify ElectroGas Ltd of its calculation of ElectroGas Ltd’s liability in its respect resulting from the termination of the FSU Conversion and Charter Agreement and/or the occurrence of the GSA Exit Date. Following the receipt of this notice, ElectroGas Ltd was to inform Enemalta of its calculation of amounts due by it to Armada Floating Gas Storage Malta Ltd. If ElectroGas Ltd did not submit the notice by the deadline stipulated in the Agreement,

then Armada Floating Gas Storage Malta Ltd was authorised to submit such a claim to Enemalta on behalf of ElectroGas Ltd. ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd agreed that payment of the termination costs would fully and finally satisfy any rights or obligations held. Furthermore, Enemalta was under no obligation to verify amounts due by ElectroGas Ltd to Armada Floating Gas Storage Malta Ltd, and in the event that any amounts were incorrect, Enemalta was to deduct this from any payment to be made by Enemalta to ElectroGas Ltd under the IA.

7.1.61 Also specified in the FSU – Enemalta Charter Direct Agreement were procedures relating to the termination of the FSU Conversion and Charter Agreement. In this respect, Armada Floating Gas Storage Malta Ltd was to notify Enemalta if it issued a termination notice to ElectroGas Ltd in accordance with the FSU Conversion and Charter Agreement. On the other hand, ElectroGas Ltd and Enemalta were to inform Armada Floating Gas Storage Malta Ltd if a termination notice was issued in accordance with the IA. If Armada Floating Gas Storage Malta Ltd had submitted a termination notice and the applicable cure period had expired, it was to submit a trigger notice to Enemalta, ElectroGas Ltd and the financing representatives. The financing representatives were the offshore security trustee appointed on behalf of the lenders to ElectroGas Ltd and the facility agent or security trustee appointed on behalf of the lenders to Armada Floating Gas Storage Malta Ltd. In submissions made to this Office, Enemalta stated that it had not been formally notified regarding the appointment of the FSU financing representative and the offshore security trustee. According to Enemalta, in the former case, this could be because no such appointment had been made. In the latter case, Enemalta was of the understanding that the offshore security trustee was HSBC Corporate Trustee Company (UK) Ltd.

7.1.62 The termination notice was to specify all outstanding amounts due and payable by ElectroGas Ltd to Armada Floating Gas Storage Malta Ltd pursuant to the FSU Conversion and Charter Agreement as at the trigger date. Outstanding amounts were to include amounts in respect of which ElectroGas Ltd was in default, but was to exclude amounts relating to any liability resulting from the termination of the FSU Conversion and Charter Agreement. Enemalta could settle such outstanding amounts on behalf of ElectroGas Ltd within ten days of the trigger notice submission. If Enemalta made such payment, or partial payment, the FSU – Enemalta Charter Direct Agreement provided for Enemalta to be subrogated to all, or part of, the creditor rights vested in Armada Floating Gas Storage Malta Ltd against ElectroGas Ltd under the FSU Conversion and Charter Agreement.

7.1.63 The FSU – Enemalta Charter Direct Agreement also provided for Enemalta's assignment and novation to the FSU Conversion and Charter Agreement. Subsequent to the issuance of a termination notice, Enemalta could provide a novation notice to Armada Floating Gas Storage Malta Ltd, or vice-versa. The novation notice was to specify that ElectroGas Ltd's rights and obligations pursuant to the FSU Conversion and Charter Agreement were to be assigned and novated from ElectroGas Ltd to Enemalta in the event that Enemalta or its affiliate acquired the facilities. The assignment and novation would take effect on the date of the transfer of the facilities subsequent to the termination of the IA. Furthermore, the FSU – Enemalta Charter

Direct Agreement specified that if Enemalta had issued the novation notice to Armada Floating Gas Storage Malta Ltd, then no amounts were to remain due and payable to Armada Floating Gas Storage Malta Ltd under the Agreement unless Armada Floating Gas Storage Malta Ltd otherwise agreed.

7.1.64 Outlined in the FSU – Enemalta Charter Direct Agreement were the circumstances in respect of which Enemalta was to provide credit support, for instance, through the provision of a letter of credit. These circumstances were either when Enemalta had submitted a novation notice to Armada Floating Gas Storage Malta Ltd, or when Enemalta was to pay the Enemalta Default Fair Value or the Enemalta Force Majeure Fair Value payable pursuant to the IA. If these payments were due and neither Enemalta nor Armada Floating Gas Storage Malta Ltd had provided notice as cited in the preceding paragraph, or Enemalta failed to provide credit support within the required timeframe, the parties agreed that Armada Floating Gas Storage Malta Ltd could terminate the FSU Conversion and Charter Agreement. Any delay in the termination of the FSU Conversion and Charter Agreement arising as a result of such circumstances was not to limit Enemalta’s liability to pay termination costs in accordance with the IA.

7.1.65 Furthermore, the FSU – Enemalta Charter Direct Agreement stipulated that no assignment and/or novation of the FSU Conversion and Charter Agreement was to take place where:

- a. the FSU Conversion and Charter Agreement was terminated (in this case, if the facilities were transferred to Enemalta or its affiliate, then Enemalta and Armada Floating Gas Storage Malta Ltd were to enter into a new agreement on substantially the same terms and conditions, at the request of the other party, for the remaining term of the Agreement);
- b. a GSA Exit occurred; and/or
- c. Enemalta (or its successors and/or assignees under the IA) was not required to pay ElectroGas Ltd any contractor’s costs, and did not choose or agree to be transferred the facilities.

7.1.66 The FSU – Enemalta Charter Direct Agreement cited specific situations in which Enemalta was to be relieved from the performance of its obligations. Moreover, the Agreement ensured that Enemalta was not responsible for obligations more onerous or burdensome than if Armada Floating Gas Storage Malta Ltd had exercised the rights available to it in accordance with the FSU Conversion and Charter Agreement and any other connected document. According to the FSU – Enemalta Charter Direct Agreement, in the event that Enemalta assigned its rights and obligations emanating from the IA to a successor or assignee, including Government pursuant to the SSA, Enemalta was to procure that the successor or assignee pay any termination costs

due to Armada Floating Gas Storage Malta Ltd.

7.1.67 Additionally, the FSU – Enemalta Charter Direct Agreement stipulated that Enemalta, ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd could not assign, novate, transfer or dispose of any or all rights and obligations pursuant to this Agreement without prior consent by the other parties. An exception to this provision was the assignment, transfer or novation to the lenders of Armada Floating Gas Storage Malta Ltd in the course of providing security for the financing of the FSU.

FSU Operation and Maintenance Agreement

7.1.68 Electrogas Ltd and Armada Floating Gas Services Malta Ltd entered into the FSU O&M Agreement on 13 April 2015. This Agreement regulated the operation, maintenance and repair of the FSU by Armada Floating Gas Services Malta Ltd. The Agreement was to be effective as from 13 April 2015 until the expiry or earlier termination of the FSU Conversion and Charter Agreement.

7.1.69 The FSU O&M Agreement stipulated the provisions that were to regulate the different phases of the project. Unless otherwise agreed to by the parties, by not later than 13 January 2016, Armada Floating Gas Services Malta Ltd was to submit to Electrogas Ltd an operations manual for the FSU. In addition, Armada Floating Gas Services Malta Ltd was to propose a marine operations manual to regulate the LNG loading and discharging procedure and the coordination required in this respect, and procedures leading up to, during and following a disconnection of the FSU from the jetty. The latter manual was to be agreed to by both parties prior to 13 March 2016, unless otherwise agreed to. Additionally, Armada Floating Gas Services Malta Ltd was to submit a quality assurance and quality management system to Electrogas Ltd and undertake to retain the spare parts specified in this Agreement. Armada Floating Gas Services Malta Ltd was to cooperate with Electrogas Ltd in the performance of testing in line with the obligations arising from the testing protocols stipulated in the FSU Conversion and Charter Agreement.

7.1.70 Listed in the FSU O&M Agreement were the key personnel that Armada Floating Gas Services Malta Ltd was to employ to man the FSU for the duration of the operation phase. Also outlined were the conditions that Armada Floating Gas Services Malta Ltd was to abide with in respect of shipboard personnel.

7.1.71 Provisions were also made with respect to variations to the Agreement and related aspects, including, among others:

- a. variation requests by Electrogas Ltd with respect to services or obligations;
- b. variation requests by Armada Floating Gas Services Malta Ltd in relation to an event causing changes in the time and/or costs of providing the services;

- c. the manner in which such requests were to be made;
- d. the approval or rejection of variations;
- e. variation entitlements available to Armada Floating Gas Services Malta Ltd arising from a change in law; and
- f. a list of amendments to the Agreement that could not be treated as variations.

7.1.72 The FSU Operation and Charter Agreement further regulated the commercial operating phase of the project, particularly the operation of the FSU, inspections that were to be undertaken after acceptance by Electrogas Ltd of the converted FSU and cargo measurement. Furthermore, the Agreement outlined provisions relating to the coordination of the project. Specifically, Armada Floating Gas Services Malta Ltd was to coordinate the operation of the FSU with Electrogas Ltd so that the latter could meet its gas supply obligations during the charter period. This entailed the scheduling and unloading of LNG deliveries to the FSU and the obligation that the FSU maintain the contract stock requirement of LNG on board at all times.

7.1.73 The Agreement also outlined the data on the operation, maintenance and repair of the FSU that Armada Floating Gas Services Malta Ltd was to retain and periodically report to Electrogas Ltd. Armada Floating Gas Services Malta Ltd was to submit to Electrogas Ltd a daily report incorporating recordings of the volume in cubic metres of LNG in each cargo tank utilised on board the FSU and the hourly LNG send-out rates for the preceding 24 hours. Furthermore, Armada Floating Gas Services Malta Ltd was to compile a monthly report in the form specified in the Agreement. In addition, Armada Floating Gas Services Malta Ltd was to supply Electrogas Ltd with a monthly report relating to safety management and to maintain other records in relation to health, safety, security and the environment.

7.1.74 Pursuant to the terms of the FSU O&M Agreement, Armada Floating Gas Services Malta Ltd was to be responsible for the maintenance of the FSU, including the delivery of a maintenance and repair programme for the current and immediately succeeding contract years, unscheduled maintenance and routine maintenance. In this regard, Armada Floating Gas Services Malta Ltd was to ensure that the FSU was operated and maintained at the required performance levels, in accordance with the standards of a reasonable and prudent operator.

7.1.75 Specified in the FSU O&M Agreement were the payments that Electrogas Ltd was to pay for the operation and maintenance of the FSU. When the FSU performed at the required performance levels, Electrogas Ltd was to pay the OPEX rate per day and pro rata for any part day. The OPEX daily rate consisted of two factors: the OPEX Euro Portion, which was set at €9,000, and the OPEX Dollar Portion, which was set at US\$4,000. The OPEX rate was to be adjusted at every year-end to cater for inflation.

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- 7.1.76 Furthermore, the Agreement provided for payments due when the FSU performed below the minimum performance levels for up to a period of 72 hours in any 12 month period. Also specified were instances where the FSU was unable to operate at or above the minimum performance levels following a force majeure event for a period of 120 days. In these cases, Standby OPEX was to be charged, that is, €8,100 and US\$3,600 daily. Partial OPEX was to be paid by ElectroGas Ltd if the FSU did not meet the required performance levels but performed at or above the minimum performance levels for reasons attributable to either Armada Floating Gas Services Malta Ltd or Armada Floating Gas Storage Malta Ltd, as the owner. The parties agreed that no OPEX, Standby OPEX or Partial OPEX was payable for any day or part thereof during any off-hire period. In addition, the payment of incentives was provided for if certain performance targets were achieved. In any one year, the payment of incentives ranged from 1.5 days to 8 days of OPEX.
- 7.1.77 Stipulated in the Agreement were measures relating to FSU operations at the Delimara terminal. In particular, Electrogas Ltd was responsible for providing, maintaining, repairing and operating the berth where the FSU could safely reach and leave and at which the FSU could safely lie, and a send-out pipeline running from the FSU berth to the ElectroGas Ltd gas facilities. On the other hand, Armada Floating Gas Services Malta Ltd was responsible for maintaining, repairing, replacing and operating the transfer hoses and loading arm between the FSU and the jetty. According to the Agreement, ElectroGas Ltd was to provide specifications for the LNG analyser package that Armada Floating Gas Storage Malta Ltd was to install as part of the conversion works. In this regard, the Agreement outlined the provisions that were to regulate cases of delivery of off-specification LNG, the notification that was to be issued by ElectroGas Ltd in such circumstances, procedures governing the acceptance or refusal of off-specification LNG, as well as the payment and indemnification obligations borne by ElectroGas Ltd. Provisions with respect to LNG transportation and unloading, particularly the specifications of LNG cargoes, the responsibility borne by ElectroGas Ltd for the vetting of the shuttle tankers utilised to deliver LNG to the FSU, details of a notice of readiness to be provided with respect to shuttle tankers and the protocol for it to become effective, were also stipulated. The Agreement further outlined the procedure for the LNG send-out nomination.
- 7.1.78 Among other matters, the FSU O&M Agreement also regulated ship-to-ship transfers, cargo scheduling, rescheduling and additional cargoes, the receipt of cargoes by Armada Floating Gas Services Malta Ltd, as well as the level of minimum inventory to be managed by ElectroGas Ltd. Minimum inventories were in place to ensure free storage capacity available to accept delivery, and were to be monitored by Armada Floating Gas Services Malta Ltd.
- 7.1.79 The Agreement further stipulated that the title to LNG unloaded to the FSU was to remain with ElectroGas Ltd. In addition, the risk of loss of LNG was to remain with ElectroGas Ltd, even when such LNG was in the possession and control of Armada Floating Gas Services Malta Ltd, except for cases specified in the Agreement. On the other hand, Armada Floating Gas Services Malta Ltd was to acquire and provide to ElectroGas Ltd a parent company guarantee, valid until the end of the term, guaranteeing the performance of its obligations under the Agreement and

indemnifying ElectroGas Ltd in instances where it defaulted. Stipulated in the Agreement was the insurance that Armada Floating Gas Services Malta Ltd was to acquire and maintain.

7.1.80 Also addressed in the FSU O&M Agreement were matters related to the limitation of liabilities. In particular, the total aggregate liability for claims related to the FSU documents, bar certain exceptions, that was to be borne by Armada Floating Gas Services Malta Ltd was to be limited to US\$40,000,000. Furthermore, the Agreement stipulated that ElectroGas Ltd and Armada Floating Gas Services Malta Ltd were to negotiate a ship shore liability agreement, the basis of which was outlined in the Agreement.

7.1.81 Furthermore, the FSU O&M Agreement imposed restrictions on the assignment and novation of rights and obligations held by ElectroGas Ltd and Armada Floating Gas Services Malta Ltd under the Agreement without the other party's prior written consent. However, Armada Floating Gas Services Malta Ltd could assign, transfer and/or novate its rights and/or obligations to its affiliates if ElectroGas Ltd was satisfied that the affiliate could perform all required obligations. In turn, ElectroGas Ltd could assign and novate its rights and obligations without the consent of Armada Floating Gas Services Malta Ltd only to the project lenders in accordance with the Lenders' Direct Agreement. The Agreement required ElectroGas Ltd to cooperate with Armada Floating Gas Services Malta Ltd in order to facilitate the potential financing of the FSU by Armada Floating Gas Services Malta Ltd through non-recourse project finance, including consenting to the assignment of the Agreement if required by the FSU financing lenders involved.

7.1.82 Specified in the Agreement was the procedure to be followed should services be suspended. ElectroGas Ltd could suspend any or all of the services performed by Armada Floating Gas Services Malta Ltd at any time and for any reason. Thereafter, ElectroGas Ltd could notify Armada Floating Gas Services Malta Ltd to recommence performance of some or all the suspended services. During periods of suspension, Armada Floating Gas Services Malta Ltd was to earn and be paid the OPEX rate. Moreover, ElectroGas Ltd was to reimburse any extra costs incurred by Armada Floating Gas Services Malta Ltd due to the suspension.

7.1.83 The FSU O&M Agreement was to terminate on the GSA Exit Date if Enemalta exercised the GSA Exit Option as per the IA. ElectroGas Ltd was to notify Armada Floating Gas Services Malta Ltd if Enemalta exercised the GSA Exit Option. In the case of such termination, any accrued payments that ElectroGas Ltd was to make for the operation and maintenance of the FSU that had not been paid, and any other amount to which Armada Floating Gas Services Malta Ltd was entitled, was to be due and payable.

7.1.84 According to the FSU O&M Agreement, at any time between the first and fifth anniversary of the FSU acceptance date, ElectroGas Ltd had the right to inform Armada Floating Gas Services Malta Ltd that it intended to enter into an amendment/replacement agreement. Under such an agreement, Armada Floating Gas Services Malta Ltd was to be compensated for the provision of operation and maintenance services on a reimbursement basis. ElectroGas Ltd and Armada Floating Gas Services Malta Ltd were to promptly negotiate the Reimbursable O&M Agreement

once the FSU O&M Agreement was finalised.

7.1.85 The FSU O&M Agreement also provided for circumstances that could arise in the execution of the Agreement. Among others, the Agreement provided for the terms and conditions that were to be adhered to in case of a force majeure. The Agreement also provided for conditions relating to material increases or decreases in costs caused by a risk event for Enemalta (such as an expropriation, import restrictions, closure of harbours, docks and facilities or a relevant change in the law) or by an uninsurable risk event. Also outlined in the FSU O&M Agreement were certain obligations that would survive despite expiry or termination thereof. In addition, stipulated were instances of default and termination, as well as the terms and conditions that were to regulate the process of transition following termination. The dispute resolution procedure that was to be adhered to in case of any controversy, disagreement or dispute arising between the parties in the performance, interpretation or application of the FSU O&M Agreement was also outlined.

7.1.86 In view of the possible novation of the FSU O&M Agreement to Enemalta and in appreciation of the importance of the FSU to the project, the NAO sought to understand the provision of this Agreement. Enemalta informed the NAO that the appendices to the FSU O&M Agreement were not available. This prevented this Office from reviewing terms relating to reporting, insurance and the ship shore liability agreement that was to be entered into, among others.

FSU – Enemalta O&M Direct Agreement

7.1.87 Enemalta, ElectroGas Ltd and Armada Floating Gas Services Malta Ltd, as the FSU operator, entered into the FSU – Enemalta O&M Direct Agreement on 13 April 2015, wherein it was acknowledged that Enemalta and ElectroGas Ltd had entered into an IA dated on or about the date of this Agreement. Moreover, Armada Floating Gas Storage Ltd and ElectroGas Ltd had entered into an FSU Conversion and Charter Agreement, again on or about the date of this Agreement, for the conversion and chartering of the vessel 'Wakabu Maru' to be utilised as a FSU. It was further acknowledged that, through a contract signed on or about the date hereof, Armada Floating Gas Services Malta Ltd and ElectroGas Ltd had entered into the FSU O&M Agreement for the operation and maintenance of the FSU. Furthermore, the terms of the FSU O&M Agreement and the FSU Conversion and Charter Agreement were interconnected, such that the provision of the services by Armada Floating Gas Services Malta Ltd under the FSU O&M Agreement was necessary to enable ElectroGas Ltd to fully enjoy its rights under the FSU Conversion and Charter Agreement. The parties entered into the FSU – Enemalta O&M Direct Agreement to ensure that the FSU O&M Agreement was novated to Enemalta at the time that the FSU Conversion and Charter Agreement was novated to Enemalta in accordance with the Enemalta FSU Charter Direct Agreement.

7.1.88 Under the terms of the FSU – Enemalta O&M Direct Agreement, Armada Floating Gas Services Malta Ltd was to, within 5 days, notify Enemalta if it issued an FSU O&M termination notice to

ElectroGas Ltd in terms of the FSU O&M Agreement. A copy of the notice was to be provided to Enemalta and the financing representatives. Armada Floating Gas Services Malta Ltd was also to inform Enemalta, ElectroGas Ltd and the financing representatives should a trigger event occur, and deliver a trigger notice to this effect, specifying all outstanding amounts undischarged as at the date on which the trigger notice was issued. The FSU – Enemalta O&M Direct Agreement specified that a trigger event would be deemed to have occurred if:

- a. Armada Floating Gas Services Malta Ltd had issued an FSU O&M termination notice to ElectroGas Ltd in accordance with the FSU O&M Agreement, a copy of which was duly provided to Enemalta and the financing representatives; and
- b. if the FSU O&M Lenders' Direct Agreement had been executed, the applicable cure period in accordance thereto in relation to an FSU O&M termination notice had expired and the circumstances that gave rise to the issuance of the notice remained, entitling Armada Floating Gas Services Malta Ltd to take enforcement action; or
- c. if the FSU O&M Lenders' Direct Agreement had not been executed, the applicable cure period in accordance with the FSU O&M Agreement in relation to an FSU O&M termination notice had expired and the circumstances that gave rise to the issuance of the notice persisted, entitling Armada Floating Gas Services Malta Ltd to take enforcement action.

7.1.89 Within ten days of the trigger notice, Enemalta could procure the settlement and discharge of all outstanding amounts undischarged as at the trigger date on behalf of ElectroGas Ltd. Nonetheless, where the settlement or discharge involved the payment of money by Enemalta or on its behalf, this was not to prejudice Enemalta's right to recover any such amounts from ElectroGas Ltd.

7.1.90 In the event of payment being made by Enemalta to Armada Floating Gas Services Malta Ltd in accordance with this Agreement and the FSU O&M Agreement, Enemalta was to be expressly subrogated to all the creditor rights that Armada Floating Gas Services Malta Ltd may have had against ElectroGas Ltd under the FSU O&M Agreement. In the event that full payment was made so that all outstanding amounts were fully and finally discharged, the subrogation rights were to be full and unlimited. On the other hand if, for any reason, Enemalta only paid part payment in respect of only part of the moneys outstanding, whether then due or not, the subrogation rights of Enemalta were to be limited to any amounts paid under this Agreement and the FSU O&M Agreement, provided that Armada Floating Gas Services Malta Ltd would be able to claim the balance due to it under the FSU O&M Agreement in preference to Enemalta.

7.1.91 In terms of the FSU – Enemalta O&M Direct Agreement, Armada Floating Gas Services Malta Ltd undertook to take no enforcement action prior to the expiry of the Enemalta cure period in respect of the relevant trigger event. On expiry of the applicable Enemalta cure period, Armada Floating Gas Services Malta Ltd could take enforcement action if the circumstances giving rise

to the issuance of the relevant FSU O&M Termination Notice remained uncured, entitling it to take enforcement action. If part-payment of outstanding amounts had been effected, Armada Floating Gas Services Malta Ltd was to take enforcement action only in respect of outstanding amounts that were undischarged as at the Trigger Date and for which the Enemalta cure period had expired.

7.1.92 As indicated above, the FSU – Enemalta O&M Direct Agreement also provided for the novation of the FSU O&M Agreement. If either Armada Floating Gas Storage Malta Ltd, as the FSU owner, or Enemalta had given a novation notice in accordance with the Enemalta FSU Charter Direct Agreement, the rights and obligations of ElectroGas Ltd pursuant to FSU O&M Agreement were to be assigned and novated from ElectroGas Ltd to Enemalta in the event that Enemalta or its affiliates had acquired the facilities. The assignment and novation would take effect on the date of the transfer of the facilities subsequent to the termination of the IA. Furthermore, no amounts were to remain due and payable to Armada Floating Gas Services Malta Ltd under the FSU O&M Agreement unless agreed to by the Company.

7.1.93 Where a novation notice had been provided to, or by, Armada Floating Gas Storage Malta Ltd under the FSU Charter Direct Agreement, Armada Floating Gas Services Malta Ltd was not to take enforcement action pending such assignment and novation, provided that the assumption date occurred within three months, or at a later date if agreed to by Armada Floating Gas Services Malta Ltd and Enemalta, after the date of the novation notice. On and from the assumption date, Enemalta was to assume the rights and obligations of ElectroGas Ltd under the FSU O&M Agreement, on the same terms and conditions. ElectroGas Ltd was to be deemed to have assigned and novated its rights and obligations to Enemalta.

7.1.94 Enemalta was to be relieved from the performance of its obligations if:

- a. at the time of the novation notice or at any time after Armada Floating Gas Services Malta Ltd had received notice that it was in material breach of this Agreement and/or the FSU O&M Agreement and such breach had not been remedied prior to the assumption date;
- b. Armada Floating Gas Services Malta Ltd had failed to deliver a trigger notice, where applicable;
- c. the FSU O&M Agreement was terminated by ElectroGas Ltd in accordance with its terms due to a default of Armada Floating Gas Services Malta Ltd; and/or
- d. if any amendment, revision or other modification was made to the FSU O&M agreement without the prior approval of Enemalta, which had the effect of increasing OPEX, fees or any other amounts payable by Enemalta on or after the assumption date.

7.1.95 The FSU – Enemalta O&M Direct Agreement cited specific situations in which Enemalta was to be relieved from the performance of its obligations. Moreover, the Agreement ensured that

Enemalta was not responsible for obligations more onerous or burdensome than if Armada Floating Gas Services Malta Ltd had exercised the rights available to it in accordance with the FSU O&M Agreement and any other connected document. Moreover, in the event that following a termination notice issued in accordance with the IA, the FSU O&M Agreement was held as terminated, void or unenforceable as a result of bankruptcy or insolvency of ElectroGas Ltd and the facilities were transferred to Enemalta or its affiliate, Enemalta and Armada Floating Gas Services Malta Ltd were to enter into a new agreement on substantially the same terms and conditions, and for the remaining term of, the FSU O&M Agreement.

7.1.96 Additionally, the FSU – Enemalta O&M Direct Agreement stipulated that Enemalta, ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd could not assign, novate, transfer or dispose of any or all rights and obligations pursuant to this Agreement without prior consent by the other parties. An exception to this provision was the assignment, transfer or novation to the lenders of Armada Floating Gas Storage Malta Ltd in the course of providing security for the financing of the FSU.

FSU – Enemalta Bridge Direct Agreement

7.1.97 Enemalta, ElectroGas Ltd, Armada Floating Gas Storage Malta Ltd, as the FSU owner, and Armada Floating Gas Services Malta Ltd, as the FSU operator, entered into the FSU – Enemalta Bridge Direct Agreement on 13 April 2015. This Agreement, which was to terminate on financial closing, provided for, among other matters, that Enemalta, the Government or its subsidiary, were to be assigned and novated the FSU Conversion and Charter Agreement and the FSU O&M Agreement should certain circumstances arise.

7.1.98 The FSU – Enemalta Bridge Direct Agreement stipulated that ElectroGas Ltd was to notify the other parties to this Agreement of defaults and potential defaults under the Bridge Loan Facility Agreement that could result in a declaration by the lenders that the loan principal and interest accrued thereon were to be repaid immediately by ElectroGas Ltd. Declarations to this effect would be triggered by the failure of ElectroGas Ltd to comply with its obligations under the Bridge Loan Facility Agreement. ElectroGas Ltd was obligated to inform Enemalta, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd of the lenders' declaration within two days. Thereafter, if the Government paid any of the principal or interest, or if the lenders rescheduled the repayment, or following 30 days from such declaration, a novation trigger event would in effect have occurred. On the occurrence of a novation trigger event, ElectroGas Ltd was to immediately notify Enemalta, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd of this event.

7.1.99 Within 30 days of a novation trigger event, Armada Floating Gas Storage Malta Ltd could notify ElectroGas Ltd and Enemalta and request the assignment and novation to Enemalta of both the FSU Conversion and Charter Agreement and the FSU O&M Agreement. Enemalta could also request to be assigned and novated these Agreements through notification to ElectroGas Ltd, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd.

Assignment and novation would take automatic effect after five days from notice and Enemalta would assume the rights and obligations of ElectroGas Ltd under the relevant agreements. Unless otherwise agreed, the Agreements were to be assigned and novated together.

7.1.100 Following the issuance of a novation trigger notice, Enemalta could also request Armada Floating Gas Storage Malta Ltd to assign and novate the FSU Conversion and Charter Agreement and the FSU O&M Agreement to Government through the Government Novation Agreement. This was contingent on Government holding the majority of shares in ElectroGas Ltd or having a binding obligation to acquire the facilities or the majority of shares in ElectroGas Ltd. If either ElectroGas Ltd or Government failed to execute the Government Novation Agreement within five days of notification, then Enemalta was to be assigned and novated the Agreements. Enemalta could also inform Armada Floating Gas Storage Malta Ltd that the Agreements were not be assigned and novated, but retained by ElectroGas Ltd where Government had either acquired or was bound to acquire the latter Company.

7.1.101 The FSU – Enemalta Bridge Direct Agreement also provided for new agreements, on substantially the same terms and conditions, to be entered into by Armada Floating Gas Storage Malta Ltd, Armada Floating Gas Services Ltd and Enemalta for the unexpired terms of the FSU Conversion and Charter Agreement and the FSU O&M Agreement. This was possible if the lenders' declaration of default by ElectroGas Ltd occurred prior to financial closing and either of these Agreements were terminated, void or unenforceable due to ElectroGas Ltd being bankrupt or affected by insolvency or similar proceedings. The request to enter into new agreements could originate from either Armada Floating Gas Storage Malta Ltd or Enemalta within 30 days of such termination. The FSU – Enemalta Bridge Direct Agreement also stipulated that Enemalta could, provided that Government had acquired the facilities or had a binding obligation to do so, inform Armada Floating Gas Storage Malta Ltd that Government was to enter into the new agreements.

7.1.102 Enemalta was to be relieved of its obligations pursuant to the FSU – Enemalta Bridge Direct Agreement if, at the time of a novation trigger event notice or any time thereafter, Armada Floating Gas Storage Malta Ltd or Armada Floating Gas Services Malta Ltd were in material breach of this Agreement. Furthermore, Enemalta was to be relieved of its obligations if the FSU Charter and Conversion Agreement and the FSU O&M Agreement were terminated by ElectroGas Ltd due to a default by Armada Floating Gas Storage Malta Ltd or Armada Floating Gas Services Malta Ltd.

7.1.103 Further outlined in the FSU – Enemalta Bridge Direct Agreement were the procedures that were to regulate variations under the FSU Conversion and Charter Agreement and the FSU O&M Agreement. Possible variations related to works required, the FSU, tests to be undertaken with respect to it, specifications, services to be provided and the operator's obligations. ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd, or Armada Floating Gas Services Malta Ltd, as the case may be, were to seek Enemalta's consent with respect to any variations that alone or in aggregate exceeded the permitted parameters, except where the relevant agreement allowed

for such variations. If Enemalta did not consent, ElectroGas Ltd, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd could proceed; however, Enemalta or Government were not obligated to accept such variations.

7.1.104 The FSU – Enemalta Bridge Direct Agreement did not allow either party to assign or novate any rights and obligations without the written consent of the other parties. However, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd could assign, transfer and/or novate their rights and/or obligations to the lenders of Armada Floating Gas Storage Malta Ltd in order to provide security under the financing agreements for the financing of the FSU and to enforce such security. Such assignment and novation was to take effect together with the assignment of the FSU Conversion and Charter Agreement and the FSU O&M Agreement.

7.1.105 Finally, noted in the FSU – Enemalta Bridge Direct Agreement was that at any time after the assignment and novation of the FSU Conversion and Charter Agreement and the FSU O&M Agreement, Enemalta could novate these Agreements to a counterparty with a minimum credit rating as specified in the FSU – Enemalta Bridge Direct Agreement who had acquired a majority interest in the facilities. Enemalta could also assign and novate the Agreements to the Government if it had acquired the facilities or had a binding declaration for acquisition.

7.2 Other Transaction Agreements

Electricity Connection Agreement

7.2.1 An Electricity Connection Agreement was entered into between ElectroGas Ltd and Enemalta on 14 April 2015, wherein it was acknowledged that ElectroGas Ltd had, or was in the process of obtaining, a licence from the MRA to produce electricity from the new plant at Delimara 4. Consequently, ElectroGas Ltd wished to connect the plant to the existing electricity distribution network. It was also acknowledged that Enemalta was the designated distribution operator in Malta pursuant to the Electricity Regulations (Legal Notice 132 of 2012). The parties had entered into a power purchase agreement wherein Enemalta had agreed to purchase electricity produced by ElectroGas Ltd, subject to the terms and conditions stated therein. In the circumstances, ElectroGas Ltd had applied for, and Enemalta had agreed to, the connection of Delimara 4 to the network subject to the terms of the Electricity Connection Agreement. By virtue of the this Agreement, Enemalta granted to ElectroGas Ltd, which accepted, the right to connect Delimara 4 to the network at the connection point in accordance with the terms and conditions set therein. The Agreement was to come into effect and the parties’ obligations were to commence as from the Effective Date, that is, the date on which the parties executed the last of the agreements, until the termination or expiry of the Project Agreements.

7.2.2 Subject to the terms and conditions of the Electricity Connection Agreement, Enemalta agreed that Delimara 4 was to be and remain connected to the distribution network at the connection point, and that the companies’ (ElectroGas’ and Enemalta’s) connection equipment

remained energised from the commencement date. The commencement date was defined in the Agreement as the date on which Enemalta notified ElectroGas Ltd that the connection could be operated, allowing the passage of electricity through the connection point, subject to the conditions specified in the PPA. Nonetheless, ElectroGas Ltd had the right to connect its connection equipment to that of Enemalta, without energisation, at any time after the Effective Date, provided that ElectroGas notified Enemalta of the intended connection date and approval to this effect was granted in line with the terms of the Agreement.

7.2.3 The Electricity Connection Agreement provided the specific details of the connection. According to the Agreement, Delimara 4 was to be connected to the existing 132kV switchboard bay located at the Delimara Control Room. The maximum import capacity was established as 275,000 kVA, assuming import referred to power flow from Delimara 4 to the network, while the maximum export capacity was set at 80,000 kVA, 10,000 kW, assuming export as power flow from the network to Delimara 4. Other technical requirements included that Delimara 4 was to, during operation, be equipped with a power system stabiliser, comply with the requirements of the EU grid code, be equipped with its own earthing system, be subject to dispatch instructions from the Enemalta Control Centre and be capable of being dispatched by responding to the settings of automatic governor control equipment.

7.2.4 The right to energisation was conditional on and subject to a number of provisions, namely that:

- a. any charges in terms of the Agreement had been paid;
- b. all necessary permits and consents to operate the connection had been obtained and maintained; and
- c. ElectroGas Ltd had duly completed the commissioning tests.

7.2.5 In consideration for Enemalta performing its obligations in accordance with the Electricity Connection Agreement, ElectroGas Ltd was to pay a one-time charge of €250,000 on the commencement date. Thereafter, ElectroGas Ltd was to pay the sum of €2,000 per month for the duration of the term. The monthly charge was to remain fixed for the first five years of the term and was subsequently to increase in proportion to the HICP. Enemalta was to invoice ElectroGas Ltd monthly in arrear, with ElectroGas Ltd required to settle the invoice within thirty days of receipt. If payment was not made within the stipulated period, interest at the rate of the 3-month EURIBOR plus three cent was to accrue thereon, calculated on a daily basis. Amounts payable were exclusive of tax.

7.2.6 ElectroGas Ltd was to obtain all necessary licences, authorisations, permits, rights and consents necessary to enable it to perform its obligations in terms of the Electricity Connection Agreement. Moreover, ElectroGas Ltd was to comply with the technical requirements for connection set out in the Agreement and to install equipment as required by Enemalta to

protect Delimara 4 and the connection equipment from faults to the network. In order to provide Enemalta with remote control, ElectroGas Ltd was to install a remote disconnection facility that would enable Enemalta to stop the passage of electricity to or from Delimara 4 and/or the connection equipment to the network through a means of remote control.

7.2.7 No replacement, renovation, modification, alteration or construction to Delimara 4 which could cause the electrical standards at the connection point to breach those in the network code or any requirement of the Agreement, or which could reasonably be expected to possibly prejudice or damage the network or the continued availability or use thereof, could be made on behalf of ElectroGas Ltd. Moreover, ElectroGas Ltd was to obtain Enemalta’s prior written approval for any changes or modifications it considered undertaking.

7.2.8 Enemalta retained the right to de-energise the connection in the event that ElectroGas Ltd breached any of the terms and conditions set in the Agreement that had not been remedied within seven days from receipt of notice. Moreover, Enemalta had the right to de-energise and/or disconnect the connection with immediate effect from notification in writing, and was to bear no liability to ElectroGas Ltd arising therefrom, if at any time after the commencement date:

- a. Delimara 4 had been transferred to Enemalta in accordance with the terms of the IA;
- b. ElectroGas Ltd failed to pay the charges and such failure continued for a period of more than ten days from the notice of breach from Enemalta; and/or
- c. ElectroGas Ltd no longer held the licences, permits and/or authorisations required to operate Delimara 4 and/or the connection equipment.

Enemalta was to re-energise the connection when any breaches have been remedied.

7.2.9 The Electricity Connection Agreement exclusively set out the grounds on which the Agreement could be terminated, and exclusively set out the grounds on which the Delimara 4 connection could be de-energised or disconnected. Unless otherwise terminated, the Agreement was to terminate on the expiry or termination of the Project Agreements. Nonetheless, Enemalta was entitled to the payment of the charges accruing until the effective date of expiry or termination.

7.2.10 Save as otherwise expressly provided, neither party could assign, novate, transfer or dispose of any or all its rights and obligations under this Agreement, whether for consideration or otherwise, except as specifically provided for. ElectroGas Ltd could assign, novate or transfer its rights and obligations to its lenders for the purpose of providing security under the Financing Agreements. On its part, Enemalta could assign, novate or transfer its rights and obligations emanating from the Electricity Connection Agreement in whole, but not in part, to a successor entity responsible for operating and maintaining the power distribution system in Malta.

7.2.11 The Electricity Connection Agreement also provided for circumstances that could arise in the execution of the Agreement. Among others, the Agreement provided for the terms and conditions that were to be adhered to in case of a force majeure. The Agreement also stipulated the circumstances under which any of its provisions could be waived, the action to be taken in case of severance of the Agreement, and the survival of certain obligations despite the expiry or termination thereof. Finally, the dispute resolution procedure that was to be adhered to in case of any controversy, disagreement or dispute arising between the parties in the performance, interpretation or application of the Electricity Connection Agreement was outlined.

Site Services Agreement

7.2.12 A Site Services Agreement was entered into between ElectroGas Ltd and Enemalta on 14 April 2015, whereby it was acknowledged that, while Enemalta controlled and operated the Delimara site, it had granted to ElectroGas Ltd an area forming part of the site by title of sub-lease, required for the provision of the services in relation to the energy facilities. Moreover, Enemalta was willing to provide a number of services to ElectroGas Ltd in accordance with the terms and conditions set out in this Agreement. On its part, ElectroGas Ltd acknowledged that it was not the sole user of the services, which were also used by Enemalta and other generating facilities at the Delimara site. The parties could amend or modify the services from time to time through, and subject to, the procedures set out in the Site Services Agreement. Enemalta was to provide the services agreed on as from the Services Start Date, established in the Site Services Agreement as 19 December 2014.

7.2.13 The Agreement set out a list of services that were to be provided by Enemalta to ElectroGas Ltd during the construction and operation phases of Delimara 4, and stipulated others that were specifically excluded. During construction, Enemalta was to provide potable water, low voltage electricity supply and access to a fire fighting system. Services that were not to be provided during this phase of the project included site fencing, steam and compressed air, warehousing and office space, security for the site and telecommunication. During the operation phase of Delimara 4, Enemalta was to supply, inter alia, an auxiliary electricity supply, evaporated, demineralised and potable water, access to the seawater cooling system intake and outfall, access to the sewage system and access to the Delimara Power Station main control room for data monitoring and dispatch purposes. However, Enemalta was not bound to provide access to oily drains, steam and compressed air, storage and office space, reservoirs for storm water, transport and lifting facilities, and security among other.

7.2.14 Additionally, a number of services that were to be made available by Enemalta for the gas facility operation phase were listed in the Site Services Agreement. These included an electricity supply, evaporated, demineralised and potable water, access to the seawater cooling system intake, access to the fire fighting system, access to the sewage system, gasoil and access to

the Delimara Power Station control room for data monitoring. Access to oily drains, steam and compressed air, nitrogen, storage and office space, reservoirs for storm water and lifting, transport and security services were among the list of items that Enemalta was not bound to provide.

7.2.15 While Enemalta was to make available the services cited in the Site Services Agreement, ElectroGas Ltd was responsible for any equipment necessary for the use of the services. Nonetheless, any equipment used by ElectroGas Ltd was to be approved by Enemalta if such equipment could affect the services made available. In the event that ElectroGas Ltd failed to meet its obligations in terms of the safe maintenance and repair of equipment used in connection with the services, Enemalta was authorised to suspend the provision and availability of the services until such failures were rectified. Such suspension was not to be deemed to constitute a default in terms of the Agreement.

7.2.16 From the Services Start Date, Enemalta was to provide ElectroGas Ltd the services in accordance with the service levels established in the Site Services Agreement for the different phases of the project, that is, the construction and operation phases of Delimara 4 and the gas facility operation phase. In consideration for Enemalta’s discharge of its obligations, ElectroGas Ltd was to reimburse Enemalta the relative charges established in the Agreement. In this context, ElectroGas Ltd was to pay the prevailing rates for electricity and potable water supplied. Enemalta was to charge ElectroGas Ltd a rate of €20 and €22 per cubic metre for evaporated and demineralised water, respectively. Gasoil was to be charged at a revised monthly average price, factored at 1.25 of the Platts Gasoil 0.1PCT average for the particular month. These charges were to be revised every year from the Services Start Date by the increase in the HICP, on a cumulative basis. The other services were to be supplied by Enemalta free of charge (Figure 39 refers). Amounts payable by ElectroGas Ltd under the Site Services Agreement were exclusive of VAT or other taxes or imposts.

Figure 39: Enemalta charges for site services

Site Service	Site Service Charge (€)	HICP Revision
Electricity	prevailing rate	not applicable
Potable water	prevailing rate	not applicable
Evaporated water	€20/m ³	applicable
Demineralised water	€22/m ³	applicable
Gasoil	monthly average x 1.25 Platts Gasoil 0.1PCT	applicable
Other services	free of charge	not applicable

7.2.17 ElectroGas Ltd was to pay the charges within thirty days of receipt of the relevant invoice from Enemalta. If payment was not made within thirty days from when it became due, interest thereon was to accrue at the agreed rate of 3 month EURIBOR plus three per cent. If a dispute regarding a payment arose, the party was to notify the other party of the amount and basis of the dispute. If the parties failed to resolve the matter regarding an invoice within thirty days

from when the dispute notice was served, either side was entitled to refer the dispute to an expert agreed on by the parties or, in case of disagreement, appointed by the Malta Arbitration Centre.

7.2.18 Enemalta was to deploy trained and competent employees in the provision of the services; on the other hand, ElectroGas Ltd was to ensure that its employees involved in making use of the services possessed the required skills and training. Moreover, the parties, as well as their respective employees and contractors, were not to act in any manner that had or could be reasonably expected to have an adverse impact on the availability of the services. The Site Services Agreement also stipulated the change control procedure that was to be followed in cases where any of the parties wished to propose any amendment or modification to the Agreement.

7.2.19 The term of the Site Services Agreement was to commence on the Services Start Date, that is, 19 December 2014, and was to remain in effect for the 18-year term of the supply contracts, unless suspended or terminated on grounds set out in the Agreement. Either party had the right to suspend the provision or receipt of the services if the other party was in material breach of the Site Services Agreement or failed to remedy the breach within 30 days of receipt of notice. Save as otherwise provided, neither party could assign, novate, transfer or dispose of any or all its rights and obligations under this Agreement, except as specifically provided for. ElectroGas Ltd could assign, novate or transfer its rights and obligations to its lenders for the purpose of providing security under the Financing Agreements. On its part, Enemalta could assign, novate or transfer its rights and obligations emanating from the Site Services Agreement in whole to a third party able to perform the function that had been previously performed by Enemalta pursuant to this Agreement.

7.2.20 The Site Services Agreement also provided for other circumstances that could arise in the execution of the Agreement. Among others, the Agreement provided for the terms and conditions that were to be adhered to in case of a force majeure. The Agreement also stipulated the circumstances under which any of its provisions could be waived, the action to be taken in case of the severance of the Agreement, and the survival of certain obligations despite the expiry or termination of the Agreement. Finally, the dispute resolution procedure that was to be adhered to in case of any controversy, disagreement or dispute arising between the parties in the performance, interpretation or application of the Site Services Agreement was outlined.

7.3 Side Letter to the Transaction Agreements

7.3.1 A Side Letter was signed on 14 April 2015 by Enemalta, ElectroGas Ltd, Gasol Malta Ltd, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA. It was acknowledged that the Transaction Agreements, executed contemporaneously with the Side Letter, were to be placed in escrow pending the issuance by the EC of a decision that the SSA conformed to state aid rules. Nonetheless, the obligations pursuant to the Transaction Agreements were to be in force as from the Effective Date, that is, 14 April 2015. Therefore, Enemalta and ElectroGas Ltd were to abide by the obligations stipulated in the Transaction Agreements until termination thereof.

7.3.2 Should the EC deem the SSA as non-compliant with state aid rules, negotiations were to be carried out to amend the Transaction Agreements so as to render them compliant with the requirements of the EC. Notwithstanding this, the Side Letter was not to be deemed or construed as an agreement or obligation on Enemalta or ElectroGas Ltd to conclude negotiations by the execution of the revised Transaction Agreements.

Chapter 7

Chapter 8

Other Project-related Agreements

8.0.1 Although not part of the Transaction Agreements, the LNG SSA and the Plant Manning Agreement warrant attention, for they form an integral, albeit indirect, part of this project. Through the LNG SSA, Government sought to secure an obligation from Socar Trading SA to continue to supply LNG to the plant even in the event of circumstances that would otherwise permit Socar Trading SA to cease supply. On the other hand, the Plant Manning Agreement allowed for the deployment of human resources to ElectroGas Ltd by ERL, a subsidiary of Government.

8.1 LNG Security of Supply Agreement

8.1.1 The Government and Socar Trading SA entered into the LNG SSA on 14 April 2015. This Agreement secured a commitment from Socar Trading SA to continue to supply LNG to the facilities even in situations that would otherwise permit Socar Trading SA to cease supply. The LNG SSA was to come into effect on the date of signature and was to continue in force until, either ten years from the date on which Socar Trading SA first supplied LNG to the facilities, or until the Government terminated it. The Government could terminate the Agreement in the event of a change in the ultimate parent of Socar Trading SA, if such a change was likely to have a materially adverse effect on the supply of LNG pursuant to, as applicable:

- a. the LNG SPA; or
- b. the Government LNG SPA, whereby Government or its assignee assumed the rights and obligations of ElectroGas Ltd emanating from the LNG SPA.

8.1.2 The LNG SSA was to be triggered should certain situations arise, namely:

- a. Socar Trading SA not being paid by ElectroGas Ltd the outstanding amounts due pursuant to the LNG SPA and in respect of which ElectroGas Ltd was in default following the expiry of the applicable cure period(s) with respect to an LNG SPA suspension notice or an LNG SPA termination notice, whereby Socar Trading SA would have informed ElectroGas Ltd that it was suspending LNG supplies or terminating the LNG SPA, respectively; and
- b. the LNG SPA being declared invalid or null, or Socar Trading SA or ElectroGas Ltd repudiating their obligations pursuant to the Agreement for whatever reason and Socar Trading SA not being paid the outstanding amounts due by ElectroGas Ltd.

On the occurrence of such trigger events, Socar Trading SA undertook to continue supplying LNG to the facilities.

8.1.3 Socar Trading SA was to notify Government of any LNG SPA suspension notice or LNG SPA termination notice issued to ElectroGas Ltd within five days. Written notices submitted by Socar Trading SA to Government with respect to trigger events were considered as trigger notices, provided that such notices were termed as such and stated that a trigger event had occurred.

8.1.4 The LNG SSA specified that in consideration for Socar Trading SA undertaking to supply the facilities following a trigger event, Government was to:

- a. pay the outstanding amounts due by ElectroGas Ltd to Socar Trading SA within ten days from the issue of a trigger notice; and
- b. be entitled to execute the Government LNG SPA.

8.1.5 Further stipulated in the LNG SSA was the effect of payments made by Government to Socar Trading SA. In this respect, Socar Trading SA undertook that, concurrently with such payment, Government would be subrogated to all creditor rights Socar Trading SA could have against ElectroGas Ltd or other third parties pursuant to the LNG SPA or any other document. If Government fully settled the amounts due by ElectroGas Ltd to Socar Trading SA, the subrogation rights were to be full and unlimited. On the other hand, if Government only paid part of such dues, then the subrogation rights were to be limited to amounts paid under the LNG SSA. In this case, Socar Trading SA would have preference over Government to claim the balance due under the LNG SPA. However, Socar Trading SA reserved the right to take enforcement action against ElectroGas Ltd following the occurrence of a trigger event in respect of outstanding amounts still undischarged after the ten days from the issue of a trigger notice. Such enforcement action included the right to terminate the LNG SPA with ElectroGas Ltd.

8.1.6 The LNG SSA outlined the provisions that were to regulate the Government LNG SPA. After Government settled outstanding amounts within ten days from the issue of a trigger notice, Government could provide written notice that it or its assignee was to assume the rights and obligations formerly assumed by ElectroGas Ltd pursuant to the LNG SPA through a new LNG SPA, that is, the Government LNG SPA. This Government LNG SPA was to be entered into if no outstanding amounts remained pending on the effective date. On receipt of Government's notice, Socar Trading SA was to terminate the LNG SPA with ElectroGas Ltd. The Government LNG SPA was to be in effect for a period corresponding to the unexpired period of the LNG SPA.

8.1.7 Additionally, the LNG SSA provided that Government was not obligated to carry out any of its obligations under this Agreement or was to be relieved from the performance thereof if:

- a. the LNG SPA was terminated by ElectroGas Ltd due to Socar Trading SA defaulting, except for the payment by Government of outstanding amounts due to Socar Trading SA prior to such termination;

- b. Socar Trading SA failed or delayed in the exercise of its rights against ElectroGas Ltd and any third party in line with the terms of the LNG SPA or related documents, rendering Government's liability under this Agreement more onerous;
- c. Socar Trading SA did not issue a trigger notice on the occurrence of a trigger event;
- d. any assignment, novation, transfer, material amendment, revision or other adjustment was made to the LNG SPA without the prior written approval of Government, bar in particular circumstances specified in the Agreement.

8.1.8 According to correspondence issued by the Cabinet Secretary on 27 November 2017, Cabinet had, on 13 November 2017, discussed two memoranda titled 'Progress in Refinancing of ElectroGas Malta Limited Bridge Loan secured by a Government Guarantee' and 'Termination of LNG Security of Supply Agreement'. Of particular interest was that Cabinet authorised the Minister for Tourism to appear on behalf of Government on the agreement to terminate the LNG SSA.

8.1.9 In fact, on 7 December 2017, Government and Socar Trading SA entered into the LNG SSA Termination Agreement. The Parties agreed to terminate the LNG SSA on financial closing, which was to occur shortly thereafter. On and from the date of termination, the Parties were no longer bound by the terms of the LNG SSA and any claims arising out of the Agreement were waived.

8.1.10 According to the Permanent Secretary MOT, the LNG SSA was intended to provide for the eventuality that the LNG SPA between Socar Trading SA and ElectroGas Ltd was terminated, in which case, under the LNG SSA, Government could opt to pay Socar Trading SA any arrears due by ElectroGas Ltd and in return, Socar Trading SA would be obligated to enter into a new LNG SPA with Government under the terms and conditions of that held with ElectroGas Ltd and for a period equivalent to the remainder of its duration. The Permanent Secretary MOT maintained that this would have ensured a continued supply of LNG to Malta; however, there was no obligation on Government to settle arrears due by ElectroGas Ltd to Socar Trading SA. This provision was regulated by the LNG SPA, which specifically stated that the remedy available to Socar Trading SA for any amounts unpaid was exercisable against ElectroGas Ltd and any third party, but not against Government.

8.1.11 The Permanent Secretary MOT argued that the LNG SSA did not provide Government any more protection than was given under the structure of the Enemalta LNG SPA Direct Agreement; however, the LNG SSA was then seen – at the time when Enemalta's shareholder structure changed – as an additional protection for Government to be able to receive gas deliveries from Socar Trading SA in the eventuality that ElectroGas Ltd became insolvent and Government did not want to acquire its shares, particularly pursuant to the Share Call Option Agreement. In support of this, the Permanent Secretary MOT made reference to the fact that the LNG SSA was materially agreed by December 2014, a few months before Enemalta requested that Enemalta

Direct Agreements be put in place, and executed in April 2015. Moreover, in view that the existing Enemalta LNG SPA Direct Agreement provided sufficient comfort to Government, in relation to security of LNG supplies as from the operational phase of the project, it was agreed to terminate the LNG SSA on financial close of the long-term financing.

8.2 Plant Manning Agreement

- 8.2.1 A tripartite Plant Manning Agreement was entered into between ElectroGas Ltd, Engineering Resources Ltd (ERL) and ESBI Engineering & Facility Management Ltd (ESBI) on 19 February 2016. ERL was registered locally as a private limited company with the MFSA on 1 July 2014. With 1,199 shares, its main shareholder is Government, with the Malta Government Investments Ltd holding the remaining one share. ESBI is a private limited company, established in 1975 and registered in the Republic of Ireland, wholly owned by the Electricity Supply Board, Ireland. ESBI provides engineering and consultancy services in the energy sector, builds, operates and maintains power stations, and trades electricity in the European energy market. In terms of the O&M Agreement entered into with ElectroGas Ltd on or about the date of the Plant Manning Agreement, ESBI was to provide O&M services in respect of Delimara 4.
- 8.2.2 Pursuant to the Plant Manning Agreement, ElectroGas Ltd and ESBI acknowledged that they wished to engage ERL to provide human resources for deployment by ESBI in performance of its obligations under the O&M Agreement, in connection with the generation and supply of electricity by ElectroGas Ltd to Enemalta through the electricity generating facility. On its part, ERL was willing to provide such human resources to ESBI. Moreover, ElectroGas Ltd agreed with this arrangement and confirmed, subject to the terms and conditions of the Plant Manning Agreement, that it was willing to assume the rights and obligations undertaken by ESBI on the expiry or termination of this Agreement. By virtue of the Plant Manning Agreement, ElectroGas Ltd and ESBI engaged ERL, and ERL accepted, to provide the human resources required.
- 8.2.3 The Plant Manning Agreement was to have effect as from the date of execution, that is, 19 February 2016. Notwithstanding this proviso, the parties’ obligations, including ERL’s commitment to make personnel available to ESBI, and ESBI’s obligation to pay the charges, were to begin on the Commencement Date. According to the Agreement, the Commencement Date, for each of the employees, referred to the date falling three weeks following the date of the commencement notice or the date indicated on the commencement notice, whichever was later. This notice was to be submitted by ESBI to ERL following the selection process for each selected applicant.
- 8.2.4 The term of the Plant Manning Agreement was to expire five years from the Combined Cycle Start Date, unless terminated prematurely in accordance with its provisions. Nonetheless, the parties agreed that ESB International could require the Agreement to be extended for one or more periods of not less than one year, subject that ERL was given prior notice to this effect by not later than six months before the expiry date or at the end of the extended period.

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8.2.5 Throughout the term of the Agreement, in fulfilment of its obligations, ERL was to make available to ESBI its employees following a selection process. ERL was to furnish the conditions of work set out in the employee agreements that were relevant in relation to the different classes of employees. The conditions of work were to include all related collective and other agreements, but were to exclude any information regarding salaries and financial terms. The relevant collective agreements, applicable at the time of the Plant Manning Agreement, were the:

- a. Enemalta-GWU (General Workers Union) Collective Agreement 2006-2010, dated 19 May 2008;
- b. Enemalta-EPOU (Enemalta Professional Officers Union) Collective Agreement 2011-2015, dated 12 October 2012;
- c. Reform Agreement - Generation Operations, dated 20 January 2012; and
- d. Reform Agreement - Maintenance Workshops and Stores, dated 14 May 2010.

8.2.6 For the duration of the Plant Manning Agreement, the employees were to retain employment with ERL, although they were to be under the direct supervision and instruction of ESBI as the Delimara 4 O&M contractor. Moreover, ERL was to remain the employees' employer on the termination or expiry of the Agreement and at no time was ElectroGas Ltd or ESBI to assume the role of or take on liability as an employer. Nonetheless, ElectroGas Ltd and ESBI acknowledged and accepted that the employees were to be under the direct responsibility of the latter and that, accordingly, exclusively for purposes related to occupational health and safety, ESBI and/or ElectroGas Ltd, but not ERL, were/was to be deemed as the employees' employer.

8.2.7 On its part, for the duration of each employee's deployment with ESBI, ERL was to ensure that the employees were available to work for a minimum of forty hours per week as required by ESBI. ERL acknowledged that ESBI required a degree of flexibility in the deployment of the employees not provided for in the employees' existing conditions of employment. In this respect, ERL undertook to use commercially reasonable endeavours to discuss and negotiate with the relevant parties the revision of work practices, job descriptions and shift patterns to accommodate the reasonable requests of ESBI in this regard. Nonetheless, ESBI acknowledged that ERL had no responsibility or liability in its regard if the employees, their representatives and/or trade unions refused to accept any revision of or derogation from work practices, job descriptions and/or shift patterns. It was further stipulated that, if throughout the term of the Plant Manning Agreement, ERL entered into one or more collective agreements in relation to its employees, the terms of such collective agreements were not to affect the charges payable by ESBI to ERL in accordance with this Agreement.

8.2.8 In accordance with the Plant Manning Agreement, ESBI was to manage the employees made available by ERL for the period of secondment under this Agreement. ESBI was to provide a

suite of policies and procedures to ERL and the employees that defined the values, norms and expectations that employees at the Delimara 4 site were expected to comply with. Nonetheless, these policies and procedures were not to conflict with the employees' conditions of employment or the applicable law. Furthermore, ESBI was to be responsible for dealing with grievances, problem solving and disciplinary proceedings relating to offences as defined in the Agreement. The Agreement also indicated the procedure that was to be adhered should any such circumstances arise.

8.2.9 Other obligations were imposed on ESBI in terms of the Plant Manning Agreement. These included that ESBI was to:

- a. provide all tools and equipment, including uniforms and personal protective equipment, necessary for employees to perform the duties assigned to them;
- b. make arrangements for employees to access the areas where deployed and provide any access cards required;
- c. train each of the employees to a level of competence and standard of performance as may be required, at no additional cost to ERL;
- d. ensure that all provisions of the Occupational Health and Safety Authority Act (Chapter 424) and any regulations enacted under this Act are complied with;
- e. ensure a safe working environment and safe working systems and practices for all employees; and
- f. inform ERL of any contractual notice from ElectroGas Ltd that impacted the terms of this Agreement or the rights and obligations of ERL under this Agreement.

8.2.10 On its part, ElectroGas Ltd was to assume the rights and obligations of ESBI pursuant to the Plant Manning Agreement, on the same terms and conditions, on the expiry or termination of the Agreement until its assignment and novation to a new contractor appointed by it to operate and maintain Delimara 4. In consideration of the assumption by ElectroGas Ltd of the O&M obligations by way of novation, ESBI was to be deemed to have assigned all its rights, title, benefit and interest under, arising from or accrued in terms of the Agreement from the date of assumption to ElectroGas Ltd. On its part, ElectroGas Ltd was entitled to exercise and enjoy all such rights, title, benefit and interest, as against ERL, as party to this Agreement in lieu of ESBI. Moreover, as from the date of assumption, ERL was to be released from all obligations and liabilities towards ESBI that, therefrom, were to be solely owed to ElectroGas Ltd as if ElectroGas Ltd was the original party to this Agreement instead of ESBI. Notwithstanding this assignment, the parties agreed that the effects of such assignment would not terminate this Agreement nor otherwise exempt ERL from its obligation to comply with its obligations and liabilities under this Agreement in favour of ElectroGas Ltd.

8.2.11 Without prejudice to the above provisions, ElectroGas Ltd was, by way of novation, substituted in the place of ESBI as principal debtor and obligor of the latter's obligations and liabilities towards ERL under, arising from or accrued pursuant to the Plant Manning Agreement at any time. As from the date of assumption, ElectroGas Ltd was to be deemed as having assumed, be bound by and perform the obligations and liabilities in substitution of ESBI by way of novation. Accordingly, ERL was to release and discharge ESBI from any obligations and liabilities that were now assumed by ElectroGas Ltd. Notwithstanding the assignment of the Agreement, ElectroGas Ltd, ESBI and ERL agreed and confirmed that the effect of such assignment would not terminate the Agreement nor otherwise exempt ElectroGas Ltd from its obligations and liabilities to comply with such obligations and liabilities of ESBI in substitution of the latter.

8.2.12 In terms of the Plant Manning Agreement, ElectroGas Ltd was, after the date of assumption, entitled to assign and novate the transferred O&M rights and obligations pursuant to this Agreement to a successor O&M contractor. Such assignment and novation was to be effected on the later of the date:

- a. not less than ten days after a written notice was made by ElectroGas Ltd to ERL; and
- b. when ElectroGas Ltd, ERL and the successor O&M contractor enter into a novation agreement substituting by way of assignment and novation the successor O&M contractor for ElectroGas Ltd as party to the Plant Manning Agreement, subject that the latter was not in breach of its obligations in terms of the Agreement.

The date of assignment and novation to a successor O&M contractor would indicate the step-out date.

8.2.13 On its assignment and novation, the successor O&M contractor was to assume the rights, title, benefit and interest, as well as the obligations and liabilities, accruing from this Agreement on the same terms and conditions of ESBI. From the step-out date, ERL was to be released from all obligations and liabilities towards ElectroGas Ltd in respect of the assigned rights, title, benefit and interests that now were solely owed to the successor O&M contractor as if the latter was an original party to the Agreement. Nonetheless, the novation agreement would not terminate the Plant Manning Agreement nor otherwise exempt ERL from its obligations and liabilities in favour of the successor O&M contractor on and from the step-out date. Moreover, with effect from this date, the successor O&M contractor was to substitute ElectroGas Ltd as principal debtor and obligor of the latter's obligations and liabilities towards ERL pursuant to this Agreement. Accordingly, the successor O&M contractor was to assume, be bound by and perform all obligations and liabilities in substitution of ElectroGas Ltd as from the step-out date.

- 8.2.14 Notwithstanding the above, in the event of any assignment and/or novation to ElectroGas Ltd of the rights and obligations of ESBI, the latter was to indemnify and hold harmless ElectroGas Ltd against all losses, expenses, damages and liabilities of any nature, provided that:
- a. the losses, expenses, damages and liabilities arose before the assumption date out of ESBI’s failure to perform its obligations or otherwise due to breach of contract, whether or not these materialised or became apparent after the assumption date; and
 - b. the losses, expenses, damages and liabilities were novated to ElectroGas Ltd in accordance with the provisions of the Plant Manning Agreement.
- 8.2.15 Before the commencement date, ESBI was to initiate a selection process to fill the positions corresponding to the job descriptions from ERL employees. ESBI was to offer vacant positions to suitable ERL applicants, although selection was at the absolute discretion of ESBI. ERL acknowledged that, in certain circumstances, ESBI was entitled to recruit externally should there be insufficient applicants with ERL to occupy the positions required.
- 8.2.16 According to the Plant Manning Agreement, the total employee positions required at Delimara 4 as at the commencement date was thirty-two. The employee positions were for a Technical Services Manager, a Replacement Production Manager, a Replacement Maintenance Manager, a Project Engineer, a Technical Support Engineer, Operations and M/E/C&I Team Leaders (7), Technicians (16), a Chemist, an Accountant, a Book Keeper/Secretary, and a Warehouse Officer.
- 8.2.17 In consideration for the obligations to be fulfilled by ERL, ESBI was to pay the charges specified in the Plant Manning Agreement, which were to remain fixed until the expiry date (Figure 40 refers). Thereafter, the charges were to increase on the commencement of each extension in proportion to the cumulative increase in the HICP over the previous six years and six months, as well as by the addition of any legally established cost of living adjustment for the same period. The annual charge was to be levied for each employee occupying such post and was to be inclusive of allowances specified in the applicable collective agreements. However, the annual charge did not include overtime, chargeable by ERL to ESBI at the rates specified in the Plant Manning Agreement.

Chapter 8

Figure 40: Plant Manning Agreement - Charges

Position	Annual Charge
Technical Services Manager	€65,000
Operations Team Leader	€45,000
Operations Technicians	€36,000
M/E/C&I Team Leader	€45,000
M/E/C&I Technician	€37,000
Warehouse Officer	€27,000
Project Engineer	€38,000
Technical Support Engineer	€42,000
Chemist	€40,000
Accountant	€40,000
Book Keeper/Secretary	€26,000
Replacement Production Manager	€65,000
Replacement Maintenance Manager	€65,000

- 8.2.18 The Plant Manning Agreement stipulated other provisions relating to the selection and employment by ESBI of ERL employees. Inter alia, the Agreement set out the selection process that was to be adhered to, the removal or replacement of employees for a justifiable cause, the use of leave, the reporting of sickness and the reporting of attendance. Other provisions relating to charges, invoicing and payment terms were specified in the Agreement. These included the compilation of forecasts of the number of employees required, the calculation of overtime, the submission and reconciliation of invoices, and the resolution of disputed amounts. The Agreement made other provisions regarding the supervision and direction of employees, for which ESBI was responsible for the duration of their deployment. Accordingly, ERL was not to be held liable for any negligent act or omission of the employees when carrying out work for or on behalf of ESBI, unless this was the result of non-compliance of ERL with its obligations under this Agreement.
- 8.2.19 The Plant Manning Agreement also provided for other circumstances that could arise during its term and execution. Among others, the Agreement stipulated the terms and conditions that were to be adhered to in case of a force majeure, confidentiality and disclosure of information, waiver and cumulative remedies, severance, and the termination of the Agreement in the event of breaches of material terms and conditions.

Chapter 9

The Transfer of Shares in ElectroGas Ltd

9.0.1 A notable development occurred on 22 July 2015 when Gasol plc, a shareholder of ElectroGas Ltd and originally the lead member of the ElectroGas Consortium, withdrew from ElectroGas Ltd, citing difficulties in raising the required equity to support the project. The other three shareholders, namely GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, acquired the shares of Gasol plc, resulting in equal shareholding. In the revised set-up, Siemens Project Ventures GmbH assumed the role of lead member. Hereunder is an account of how the change in shareholding occurred; however, reference is first made to the agreement that regulated this transfer, that is, the Pre-Financial Closing Share Transfer Restriction Agreement. It is to be noted that this Agreement was entered into on 27 July 2015, that is, after the transfer of shares was registered.

9.1 Pre-Financial Closing Share Transfer Restriction Agreement

9.1.1 On 27 July 2015, an agreement was entered into between Enemalta and ElectroGas Ltd that imposed certain restrictions on the transfer of shares of the latter Company prior to the achievement of financial closing. In the agreement, the Pre-Financial Closing Share Transfer Restriction Agreement, the signatories acknowledged that they were party to an IA dated 14 April 2015 relating to the Delimara project as defined therein. Moreover, the Parties agreed to grant Enemalta additional rights to terminate the Transaction Agreements prior to the Final Effective Date in accordance with the provisions of the Pre-Financial Closing Share Transfer Restriction Agreement. The Agreement was valid and binding on the parties from the date of its execution and was to terminate on the Final Effective Date.

9.1.2 Pursuant to the Pre-Financial Closing Share Transfer Restriction Agreement, ElectroGas Ltd was to, on or before the date of this Agreement, amend its Articles of Association. The amendment required the inclusion of an article whereby the transfer of shares and any amendments, alterations, deletions and/or additions to ElectroGas’ Memorandum and Articles of Association could only be implemented subject to the unanimous consent of all its shareholders and the written consent of Government.

9.1.3 Moreover, without prejudice and in addition to any other provisions in the IA, ElectroGas Ltd was not to:

- a. permit any transfer of shares without the prior approval in writing of all shareholders;
- b. permit any transfer of shares without the prior written approval of Government;

- c. agree to or permit any amendment, alteration, and/or deletion to the Memorandum and Articles of Association without the prior approval in writing of all the shareholders; and/or
- d. agree to or permit any amendment, alteration, and/or deletion to the Memorandum and Articles of Association without the prior written approval of Government.

ElectroGas Ltd was to include appropriate legends on all its share certificates of the above restrictions, and was not to register or give effect to any purported transfer of shares that was not in compliance with these restrictions.

9.1.4 The Pre-Financial Closing Share Transfer Restriction Agreement stipulated additional provisions whereby, without prejudice and in addition to any other provisions in the IA, Enemalta was, in terms of this Agreement, entitled to terminate the Transaction Agreements by serving a notice on ElectroGas Ltd on the occurrence of any of the following prior to the Final Effective Date:

- a. any breach of the above obligations and/or undertakings imposed on ElectroGas Ltd (cited in paragraph 9.1.2 and 9.1.3); and/or
- b. any change in the Memorandum and Articles of Association of ElectroGas Ltd that diluted, circumvented, cancelled, removed and/or amended, to the prejudice of Government, the restrictions on the transfer of shares and/or changes or amendments thereto.

9.1.5 A termination notice sent to ElectroGas Ltd in accordance with the above terms was to have the effect of terminating the Transaction Agreements on the expiry of five days, or any longer period specified in the notice, except where ElectroGas Ltd had, prior to the expiry of such period, remedied the relevant breach or circumstance. Any such termination was to be without liability to either party and ElectroGas Ltd was to, within five days from any such request by Enemalta, terminate the Site Lease Deed. Moreover, by way of security, ElectroGas Ltd granted Enemalta power of attorney to, on its behalf, do all that required to formalise the termination of the Site Lease Deed.

9.1.6 In accordance with the Pre-Financial Closing Share Transfer Restriction Agreement, neither party was to assign, novate or in any other manner transfer or dispose of any or all of its rights and obligations under this Agreement without the written consent of the other party. Any actual, attempted or purported assignment, transfer and/or novation by a party of any of its rights, obligations or interests in, under or pursuant to this Agreement that did not comply with this requirement were to be null, void and have no legal effect.

9.1.7 The rights and remedies provided by the Pre-Financial Closing Share Transfer Restriction Agreement could be waived only in writing and such waiver was only operative with regard to the specific circumstances referred to. Nonetheless, unless a right or remedy was an exclusive right of any one party, the exercise of such remedy by a party was without prejudice to the parties' other rights and remedies. Any failure to exercise or any delay in exercising a right

or remedy was not to constitute a waiver of that right or remedy or of any other rights or remedies.

9.1.8 The Pre-Financial Closing Share Transfer Restriction Agreement provided for other provisions that were binding on the parties. These included provisions relating to severance should any provision of the Agreement become illegal, invalid or unenforceable, the fact that no amendment could be made to the Agreement unless signed by the authorised representatives of both parties and that the provisions expressed or impliedly expected to survive expiry or termination were to survive expiry or termination of the Transaction Agreements. Moreover, the Agreement specified the procedure for the notification of notices and the dispute resolution procedure that was to be followed should any controversy, disagreement or dispute arise between the parties in the performance, interpretation or application of this Agreement.

9.2 Change in Consortium

9.2.1 On 16 July 2015, three months after the signing of the PPA, the GSA and the IA, ElectroGas Ltd submitted correspondence to the Minister for Energy and Health, the Hon. Dr Konrad Mizzi, and to the Executive Chair Enemalta, informing them that Gasol plc was facing issues in raising further equity to continue supporting the project. Also cited was that Gasol plc required more time to raise the necessary equity. Siemens Project Ventures GmbH, Socar Trading SA and GEM Holdings Ltd jointly decided to raise their equity and replace Gasol (Malta) Ltd,²⁵ in order to ensure the long-term sustainability of the project. To this end, ElectroGas Ltd proposed a change in the shareholding of the Company from the current structure where Gasol (Malta) Ltd and GEM Holdings Ltd each held 30 per cent, while Siemens Project Ventures GmbH and Socar Trading SA each held 20 per cent, to a new formation where GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA all held an equal shareholding of 33.333 per cent. In this respect, ElectroGas Ltd sought the consent of the Ministry for Energy and Health (MEH), and that of Enemalta in terms of the IA, for this change in shareholding.

9.2.2 According to Enemalta, given the urgency of the matter, during a meeting held between the Permanent Secretary MEH and the Executive Chair Enemalta, it was decided to seek advice from Enemalta’s legal advisors with respect to the ramifications of this change in consortium. In addition, the Permanent Secretary MEH and the Executive Chair Enemalta agreed to commission an ad-hoc committee to carry out a technical re-assessment of the bid by the ElectroGas Consortium in view of the proposed changes in shareholding structure.

9.2.3 In response to the request submitted by ElectroGas Ltd, the Permanent Secretary MEH and the Executive Chair Enemalta appointed an evaluation committee (hereinafter referred to as the Gasol Evaluation Committee) to assess whether the changes in the shareholding of the Company still fulfilled the bidder’s qualification criteria outlined in the RfP. The Gasol

²⁵ Gasol (Malta) Ltd was registered in the United Kingdom on 25 March 2015 and its shareholding was held by Gasol LNG Import Ltd, in turn a subsidiary of Gasol plc.

Evaluation Committee was composed of a Chair and two members. The Chair of this Evaluation Committee previously served as the RfP Stage 5 Evaluation Committee Chair, while the members were the RfP Stage 2 Evaluation Committee Chair and the RfP Stage 3 Evaluation Committee Commercial Expert. Following queries made by the NAO, Enemalta indicated that no formal letter of appointment or terms of reference were issued to the members of the Gasol Evaluation Committee. Requests for documentation, essential in determining when the Committee was established, was not provided by Enemalta. Enemalta maintained that the Permanent Secretary MEH and the Executive Chair Enemalta verbally informed the members of the Gasol Evaluation Committee of their assignment during a meeting convened specifically for the matter.

9.2.4 The report titled 'Technical Assessment on the Qualification of Electrogas Malta Consortium with the Bid Requirements on the proposed shareholding structure' was concluded on 21 July 2015. The Gasol Evaluation Committee was tasked to assess whether the exit of Gasol plc would negatively affect the ElectroGas Consortium's:

- a. compliance with the criteria of the RfP; and
- b. resultant scoring by the RfP Evaluation Committees.

9.2.5 The Gasol Evaluation Committee considered that the exit of Gasol plc could have only bore an impact on the RfP Stage 2 and Stage 3 evaluations, which related to the establishment of the minimum requirements and additional capabilities, respectively. Therefore, the Gasol Evaluation Committee limited its review to these two stages.

9.2.6 In its assessment of the minimum requirements, the Gasol Evaluation Committee sought to establish whether ElectroGas Ltd would continue to qualify under the minimum requirements criteria set out in the RfP given the change in shareholding. One of the minimum requirements stipulated in the RfP Stage 2 was evidence of experience of two relevant CCGT projects developed by the electricity facilities developer with a net send-out generation capacity of not less than 150 MWe. The CCGT projects cited in the RfP were Thaddart Morocco and T-Power Belgium, which projects were managed and partly owned by Siemens Project Ventures GmbH. Therefore, the Gasol Evaluation Committee was of the opinion that this requirement continued to be fulfilled through the participation of Siemens Project Ventures GmbH. Also required was evidence of experience of two relevant LNG projects realised by the gas facilities developer. The experience cited by the ElectroGas Consortium in the RfP related to the Reythousa LNG Terminal and the Azerbaijan Gas Processing Plant. Both projects were managed and partly owned by Socar Trading SA. The Gasol Evaluation Committee considered this requirement as still fulfilled through the involvement of Socar Trading SA.

9.2.7 Another condition that was to be fulfilled in terms of the RfP Stage 2 minimum requirements related to financial strength and credit worthiness, with the bidders' equity providers to evidence aggregate shareholders' funds of at least €150,000,000. The Gasol Evaluation

Committee deemed this requirement fulfilled by ElectroGas Ltd, with shareholders' funds relating to Siemens Project Ventures GmbH, Socar Trading SA, Tumas Group and Gasan Group as, €149,000,000, €112,000,000, €93,600,000 and €78,000,000, respectively, as per relevant audited financial statements. Another requirement indicative of financial strength and credit worthiness was that one or more of the Consortium members, with a total proposed shareholding in the SPC of at least 30 per cent, would have an investment grade international credit rating of BBB- or better from Fitch IBCA, or Standard and Poor's, or equivalent. Siemens AG and Siemens Financial Services were rated A+ by Standards and Poor's, while Socar, which provided a letter of support to Socar Trading SA, had a credit rating of BBB- by Fitch. The Gasol Evaluation Committee stated that both shareholders had a shareholding that exceeded 30 per cent and therefore this requirement was still satisfied.

9.2.8 The ability to raise finance was another requirement that bidders had to demonstrate through at least one consortium member having acted in a significant leading role for an independent project that had successfully raised non-recourse or limited recourse financing of at least €300,000,000 in the last four years. Cited in the Gasol Evaluation Committee report was that the RfP bid by the ElectroGas Consortium indicated a wide range of projects that had been actively financed by Siemens Project Ventures GmbH, which in total amounted to approximately US \$10.8 billion. In this context, the Gasol Evaluation Committee considered this requirement as still being fulfilled with the exit of Gasol plc.

9.2.9 Asserted by the Gasol Evaluation Committee was that the change in membership did not influence the requirement of completion of the project. Noted was that the open cycle gas turbine mode was still to be completed within 18 months. Furthermore, according to the Gasol Evaluation Committee, a review of the original submission by the ElectroGas Consortium in terms of the minimum requirements over and above those specified in the EoIC indicated that there was no impact resulting from the proposed change.

9.2.10 The NAO reviewed the basis of assessment undertaken by the Gasol Evaluation Committee with respect to the RfP Stage 2 evaluation of compliance with the minimum requirements. In the Office's opinion, the conclusion arrived at by this Committee was reasonable and valid, with the departure of Gasol plc having no impact on adherence to the minimum requirements.

9.2.11 In the assessment of the additional requirements undertaken by the RfP Stage 3 Evaluation Committee, reference was made to the fact that, if any of the ElectroGas Consortium members, contractors or subcontractors named in the submission was changed, replaced or substituted, then the Stage 3 evaluation would cease to be valid and a new evaluation would have to be carried out. It is to be noted that the exit of Gasol plc altered membership in ElectroGas Ltd by increasing the shareholding of the other members; however, it was not evident that this change bore any impact on the contractors or subcontractors. It was in this context that the Gasol Evaluation Committee was tasked to review whether the departure of Gasol plc from ElectroGas Ltd would have affected the evaluation undertaken in terms of additional capabilities.

9.2.12 The evaluation at RfP Stage 3 considered the degree to which the bidders exceeded the minimum requirements assessed at Stage 2. The following criteria were considered:

- a. company's electricity facility additional experience;
- b. company's gas facility additional experience;
- c. energy and gas delivery; and
- d. bidders' financial strength.

The Gasol Evaluation Committee concluded that the exit of Gasol plc from the ElectroGas Consortium did not negatively impact the compliance with the criteria or the resultant scoring of the Consortium by the RfP Stage 3 Evaluation Committee.

9.2.13 The NAO reviewed the basis of assessment by the Gasol Evaluation Committee and agreed with the conclusion reached, that is, that the departure of Gasol plc would not have resulted in changes to the marks obtained by the ElectroGas Consortium in the RfP Stage 3 evaluation. The only criterion where marks depended solely on the lead member, at the time Gasol plc, was the credit rating of the lead member, which was a sub-criterion of the determination of financial strength. In this respect, the ElectroGas Consortium was awarded no marks by the RfP Stage 3 Evaluation Committee. It is on this basis that the NAO confirms that the exit of Gasol plc bore no impact on the evaluation of additional capabilities.

9.2.14 Having considered that the departure of Gasol plc had no influence on the outcome of the RfP Stage 2 and Stage 3 evaluation, it is not clear to the NAO what evident advantage the ElectroGas Consortium identified in nominating Gasol plc as its lead member. More so when the exit of Gasol plc occurred so soon after the signing of the Transaction Agreements.

9.2.15 On 21 July 2015, the Permanent Secretary MEH informed ElectroGas Ltd that the Ministry found no objection to the revised composition as proposed, subject to any contractual or other obligations in relation to third parties, including Enemalta. Copied in this correspondence were the Minister MEH, the Executive Chair Enemalta and the Permanent Secretary MFIN.

9.2.16 Following the conclusion of the Gasol Evaluation Committee report, on 22 July 2015 Enemalta informed ElectroGas Ltd that it was granting its consent to the revised shareholding structure as proposed, subject that ElectroGas Ltd adhered to the Delimara 4 project schedule and its continued commitment to Enemalta on the implementation of the PPA.

9.2.17 On 28 July 2015, ElectroGas Ltd gave notice in accordance with Section 120(3) of the Companies Act (Cap. 386) that an aggregate of 3,000 ordinary shares, with a nominal value of €1 per share, had been transferred on 22 July 2015 by Gasol (Malta) Ltd to Siemens Projects Ventures GmbH, GEM Holdings Ltd and Socar Trading SA (Figure 41 refers).

Figure 41: Transfer of ElectroGas Ltd shares by Gasol (Malta) Ltd

Name of transferor	Name of transferee/ person entitled to shares transmitted	Number of shares transferred/transmitted	Type and class of shares
Gasol (Malta) Ltd	Siemens Projects Ventures GmbH	1,333	Ordinary
Gasol (Malta) Ltd	GEM Holdings Ltd	334	Ordinary
Gasol (Malta) Ltd	Socar Trading SA	1,333	Ordinary

9.2.18 The NAO noted that, at the time the transfer of shares was made, the only contract regulating the parties in this regard was the IA, which stipulated specific restrictions on the leasing and transfer of shares or assets. Pursuant to clause 14.1 of the IA, ElectroGas Ltd was to, in respect of the transfer of the registered ownership of ordinary share capital, make appropriate provisions in its Articles of Association to ensure compliance with the provisions of clause 14.

9.2.19 Clause 14.2 of the IA regulated that, after the Final Effective Date, ElectroGas Ltd was to ensure that until at least three years after the Open Cycle Energy Delivery Date, the initial shareholders retained the following percentage shareholding, whether directly or through a fully-owned subsidiary:

- a. 30 per cent by GEM Holdings Ltd;
- b. 20 per cent by Socar Trading SA;
- c. 20 per cent by Siemens Project Ventures GmbH; and
- d. 30 per cent by Gasol plc;

except:

- i. where required under any law or by the operation of the law or by order of a court, tribunal or governmental authority or agency having appropriate jurisdiction;
- ii. where Enemalta has given its prior written approval; or
- iii. as part of a public offering.

9.2.20 After the Final Effective Date, subject to the aforementioned, no initial shareholder was to transfer any ordinary share capital at any time prior to a period of three years after the Open Cycle Energy Delivery Date, except for a transfer:

- a. to another initial shareholder;
- b. to an affiliate of any initial shareholder that continues to be an affiliate of such initial shareholder after the transfer, until at least three years after the Energy Delivery Date;

- c. required under any Law or by the operation of the Law or by order of a court, tribunal or governmental authority or agency having appropriate jurisdiction;
- d. to which Enemalta has given its prior written approval; or
- e. as part of a public offering or a transfer to a Permitted Transferee (as defined below);

provided, that the initial shareholders retain ownership, directly or indirectly, of not less than 51 per cent of the ordinary share capital prior to the date that is three years after the Energy Delivery Date.

9.2.21 In the NAO's understanding, the IA only catered for transfers of shares taking place after the Final Effective Date, that is, after financial closing was achieved in early January 2018. The transfer of shares from Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd took place on 22 July 2015, which was well before the Final Effective Date and therefore not regulated by the IA. At the time of the transfer of shares, this was only regulated by the Memorandum and Articles of Association of ElectroGas Ltd. Before the transfer of shares on 22 July 2015, that is, on 23 April 2015, the shareholders of ElectroGas Ltd approved a resolution which resolved that Article 28 of the Articles of Association be supplemented with Article 28.1 which read, "All share transfers shall be compliant with Clause 14 (Restriction on Leasing and Transfer of Shares or Assets) of the Implementation Agreement dated 14 April 2015." Furthermore, it was resolved that Article 46.2 of the Articles of Association would be introduced, which Article read,

"46.2 Notwithstanding the provisions of Article 18 to 28.1 (both inclusive) and Article 46.1 of the Articles of Association of the Company, the matters hereunder stipulated shall not be capable of being implemented without the unanimous consent of all the shareholders of the Company; AND the written consent of the Government of Malta:

46.2.1 transfer of shares; and

46.2.2 any amendments, alterations or additions to the Memorandum and Articles of Association."

9.2.22 Of relevance is that, following the change in the Articles of Association, on 27 July 2015, Enemalta and ElectroGas Ltd entered into the Pre-Financial Closing Share Transfer Restriction Agreement. The Agreement was to be binding on the parties from the date of its execution until the Final Effective Date. The Pre-Financial Closing Share Transfer Restriction Agreement stipulated that ElectroGas Ltd was to procure that, on or before the date of the Agreement, the Company's Articles of Association were to be amended to include:

"46.2 Notwithstanding the provisions of Article 18 to 28 (both inclusive) and Article 46.1 of the Articles of Association of the Company, the matters hereunder stipulated shall not be capable of being implemented without the unanimous consent of all the shareholders of the Company; and the written consent of the Government of Malta:

46.2.1 transfer of shares; and

46.2.2 any amendments, alterations, deletions and/or additions to the Memorandum and Articles of Association."

9.2.23 According to the Pre-Financial Closing Share Transfer Agreement, without prejudice and in addition to any other provisions in the IA, ElectroGas Ltd was not to:

- a. permit any transfer of shares without the prior approval in writing of all the shareholders; and/or
- b. permit any transfer of shares without the prior approval in writing of Government; and/or
- c. agree to or permit any amendment, alteration, and/or deletion to its Memorandum and Articles of Association without the prior approval in writing of all the shareholders; and/or
- d. agree to or permit any amendment, alteration, and/or deletion to its Memorandum and Articles of Association without the prior approval in writing of Government.

9.2.24 Moreover, the Pre-Financial Closing Share Transfer Agreement provided that without prejudice and in addition to any other provisions in the IA, and notwithstanding Clause 24.9 of the IA which exclusively set out the grounds for termination of the Transaction Agreements, Enemalta was entitled to terminate the Transaction Agreements by serving a notice on ElectroGas Ltd on the occurrence of any of the following prior to the Final Effective Date:

- a. any breach of ElectroGas Ltd’s obligations and/or undertakings in terms of clause 3.1 of the Pre-Financial Closing Share Transfer Agreement, which imposed further restrictions on the transfer of shares; and/or
- b. any change in the Memorandum and Articles of Association of ElectroGas Ltd, which diluted, circumvented, cancelled, removed and/or amended, to the prejudice of the Government, the restrictions on transfers of shares and/or changes to the Memorandum and Articles of Association of ElectroGas Ltd cited in clause 3.1.1 of the Pre-Financial Closing Share Transfer Agreement.

9.2.25 Of note was the legal advice obtained by the Ministry for Energy and Health on 29 July 2015 regarding the implications of the transfer of shares from Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd, purely from a public procurement perspective. The legal advice was based on the declaration by the Gasol Evaluation Committee that the presence of Gasol plc in the ElectroGas Consortium did not constitute a decisive factor in the evaluation, and that without Gasol plc, the Consortium continued to meet the financial and technical requirements of the RfP. Also acknowledged was that the transfer of shares had occurred due to the imminent insolvency of Gasol plc and its inability to meet its financial obligations in relation to the project.

9.2.26 According to the legal advice sought, the award of contracts for the supply of energy and fuel are specifically excluded from the application of the EU Utilities Directive, as well as regulation 20 of Subsidiary Legislation 174.06 relating to Public Procurement of Entities in the Water, Energy, Transport and Postal Services Sectors. Notwithstanding this, the principles of the TFEU are still

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applicable and the procurement process, as well as contracts awarded pursuant thereto, are to respect the principles of transparency, equal treatment and non-discrimination. Noted in the legal advice obtained by the MEH was that the fundamental principles of equal treatment and transparency, as set out in the TFEU, require that a contract is not awarded to a tenderer who has not been prequalified. Furthermore, changes in the composition of a tenderer raise concerns with regard to the lawfulness of the decision awarding the contract, particularly when the change occurs prior to the award of a contract, or could constitute substantial alterations to a contract when changes are effected following the conclusion of the procurement procedure and during the term of the relevant contract. On the basis of the facts of the transfer of shares from Gasol (Malta) Ltd, and the declaration of the Gasol Evaluation Committee, the position presented in the legal advice was that there was a strong basis to argue that the transfer of shares did not infringe the principles of the TFEU. Nonetheless, it was concluded that, in practice, whether a change was permissible would always depend on a specific assessment of the facts on a case-by-case basis.

9.2.27 Following these developments, the NAO noted that on 15 December 2017, ElectroGas Ltd amended its Memorandum and Articles of Association to include a provision whereby any pledging of shares prior to Financial Closing required the consent of Government. Government had in fact consented to the pledging of shares on 12 December 2017.

9.3 Analysis on the Regularity of the Transfer of Shares

9.3.1 A timeline of the salient developments with regard to the change in the shareholding of ElectroGas Ltd is presented hereunder (Figure 42 refers).

Figure 42: Timeline of transfer in shareholding of ElectroGas Ltd

Date	Details
23 April 2015	Gasol (Malta) Ltd, GEM Holdings Ltd, Siemens Project Venture GMBH and Socar Trading SA resolved to amend the Articles of Association of ElectroGas Ltd, whereby the transfer of shares and any amendments to the Articles would require the unanimous consent of all shareholders and the written consent of Government.
4 May 2015	The above amendments were registered with the MFSA.
16 July 2015	ElectroGas Ltd sought the consent of the MEH for a change in the shareholding composition of ElectroGas Ltd, in particular the departure of Gasol plc and the assumption of its equity by the other shareholders.
16 July 2015	ElectroGas Ltd sought the consent of Enemalta for a change in the shareholding composition of ElectroGas Ltd, in particular the departure of Gasol plc and the assumption of its equity by the other shareholders.
July 2015	Permanent Secretary MEH and Executive Chair Enemalta appointed the Gasol Evaluation Committee to assess whether the changes in the shareholding of ElectroGas Ltd still fulfilled the bidders qualification criteria outlined in the RfP.
July 2015	The MEH sought legal advice with regard to the implications of the transfer of shares of Gasol (Malta) Ltd, purely from a public procurement perspective.

21 July 2015	The MEH found no objection to the revised shareholding composition, subject to any contractual or other obligations in relation to third parties and Enemalta.
21 July 2015	The Gasol Evaluation Committee concluded that the exit of Gasol plc from the ElectroGas Consortium did not negatively impact on the Consortium's compliance with the RfP criteria and the resultant scoring by the adjudicating committees.
22 July 2015	Enemalta consented to the revised shareholding structure as proposed, subject that ElectroGas Ltd adhered to the Delimara 4 project schedule and the continued commitment to Enemalta on the implementation of the PPA.
22 July 2015	The transfer of shares of Gasol (Malta) Ltd to the other shareholders was registered with the MFSA.
27 July 2015	Enemalta and ElectroGas Ltd entered into the Pre-financial Closing Share Transfer Restriction Agreement, which among others, regulated the transfer of shares prior to Financial Closing, that is, January 2018.
29 July 2015	Legal advice obtained by the MEH concluded that there was a strong basis to argue that the Gasol plc share transfer did not infringe the principles of the TFEU, although whether a change was permissible would always depend on a specific assessment of the facts on a case-by-case basis.
27 October 2016	Amendments to the Memorandum and Articles of Association of Electrogas Ltd with the MFSA, including provisions that the issue of new shares was to be made by Extraordinary Resolution and that any transfer of shares and amendments.
12 December 2017	Government consents to the pledging of shares.
15 December 2017	Amendment to the Memorandum and Articles of Association of Electrogas Ltd regarding the pledging of shares registered with the MFSA, whereby any pledge to be granted prior to Financial Close was subject to the consent of Government.

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- 9.3.2** Having considered the developments leading to the transfer of shares from Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd, the NAO is of the understanding that this transfer was not in line with the prevailing contract in force at the time of the transfer, that is 22 July 2015. At this point in time, the only provisions regulating transfers of shares were those stipulated in the IA, which allowed for such transfers to take place after Financial Closing, that is, January 2018. In the NAO's opinion, the consent provided by the MEH and Enemalta was in breach of the provisions of the IA. Although the parties sought to regularise this matter through the Pre-Financial Closing Share Transfer Restriction Agreement, the application of this Agreement was only valid and binding between the parties from the date of its execution, that is, 27 July 2015.
- 9.3.3** Aside from the regularity of the change in shareholding of ElectroGas Ltd in terms of the contractual framework that regulated its relationship with Government/Enemalta, the NAO sought to determine whether the transfer of shares was permissible from a public procurement perspective. The General Rules Governing Tendering regulating procurement undertaken by public sector entities, applicable at the time, provided for restrictions in this respect. In fact, clause 2.3 stipulated that, "All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole

performance period of the contract other than as may be permitted or required by law.” This restriction is reinforced through the General Conditions of Contract issued by the Department of Contracts (DoC), applicable to all tendering procedures initiated by Government. According to the General Conditions of Contract, the composition of a selected joint venture or consortium was not to be altered without the prior consent in writing of the DoC.

9.3.4 The views of the DoC regarding the applicability of provisions regulating changes in consortia post tender award were sought by the NAO. In addressing queries raised, the DoC referred the matter to Enemalta. In its reply to the DoC, Enemalta maintained that the change in composition did not require the prior consent from the DoC, in view of the fact that the PPA and GSA procurement process were not governed by Public Procurement Regulations. Enemalta sustained that the procurement process for the long-term PPA and GSA was not governed by Directive 2004/17/EC, in force at the time, by virtue of, among others, Article 26 of the Directive and the corresponding regulations implementing it into Maltese law. Article 26 provided that the Directive did not apply to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in the production and supply of electricity. Enemalta stated that since it is active in the production and supply of electricity, and that the award of the PPA and GSA to ElectroGas Ltd was made in the context of the provision of electricity, then the Directive was not applicable. Hence, Enemalta argued, the General Rules Governing Tendering and the General Conditions of Contract were not relevant. This position was reflected in the decision by the EC regarding state aid. The DoC informed the NAO that it subscribed to that stated by Enemalta.

9.3.5 While the NAO acknowledges that the position adopted by Enemalta was in line with applicable legislation, the legal framework that regulates the procurement of electricity and gas does not specifically address circumstances involving changes in the composition of the winning bidder. This lacuna provides for different interpretations as to what actually constitutes a change in bidders/contractors. Case law cited in this respect is ambivalent, largely determined by the specific circumstances of each case, which varied according to whether the change was considered as the internal re-organisation of a contractual partner or an actual change of the contract partner. Although it is not the NAO’s intention or remit to pronounce itself on the legal implications of the change in shareholding of ElectroGas Ltd, it is this Office’s understanding that the departure of Gasol plc was in breach of the contractual obligations in force at the time.

Chapter 10

The Financing Agreements

10.1 Introduction to the Financing Agreements

- 10.1.1 The financing of a project such as this is not an issue that the NAO would ordinarily delve into, as this is generally a matter of private investment at the discretion of the economic operator awarded the public contract and outside the ambit of public funds. However, in this case, Government provided an element of security to the private investment through a government guarantee, hence rendering the matter subject to the scrutiny of the NAO.
- 10.1.2 Government’s involvement in assisting ElectroGas Ltd secure financing for the project first emerged in mid-2014, when it became evident that for ElectroGas Ltd to obtain funding the SSA was to be in effect. However, Government decided that for the SSA to be entered into, this was to be cleared by the EC as not constituting state aid. Until the EC’s decision in this regard, Government consented to provide a government guarantee to assist ElectroGas Ltd in securing financing.
- 10.1.3 In this regard, on 18 December 2014, ElectroGas Ltd entered into a €110,000,000 Interim Bridge Loan Facility Agreement with BoV to finance its project. Fundamental in securing the Facility was the Government Guarantee entered into between Government and BoV on 19 December 2014. The government supported amount was equal to 80 per cent of all principal, interest, fees and other expenses pursuant to the Interim Bridge Loan Facility Agreement, and were capped at €132,000,000. In May 2015, the Facility was extended from €110,000,000 to €137,500,000, with a corresponding increase in the Government Guarantee effected shortly thereafter.
- 10.1.4 As at mid-2015, the EC had not yet issued its decision regarding whether the SSA constituted state aid, which in turn prohibited finalisation of this Agreement. Against this background, the €137,500,000 Interim Bridge Facility was refinanced and replaced by a longer term facility. To this end, on 28 July 2015, ElectroGas Ltd, various banks and Government entered into a €450,000,000 Bridge Loan Facility Agreement. Under this agreement, ElectroGas Ltd, as borrower, was to utilise the facility made available by the banks, whereas Government fulfilled the role of government guarantor.
- 10.1.5 In conjunction, on 31 July 2015, Government, BoV and ElectroGas Ltd entered into another Government Guarantee. The maximum liability of Government under this guarantee was capped at €432,000,000.

10.1.6 However, prior to signing of the €450,000,000 Interim Bridge Loan Facility and the Government Guarantee, Government and ElectroGas Ltd, together with other parties, entered into a number of agreements related to the financing arrangements. These comprised, the Accession Compensation Agreement, the Share Call Option Agreement and the Share Transfer Agreement, all dated 27 July 2015. The Accession Compensation Agreement regulated the effects of accession whereby Government would assume the responsibilities of ElectroGas Ltd should certain circumstances arise. The Share Call Option Agreement afforded Government the option to acquire all shares in ElectroGas Ltd should such circumstances materialise. The Share Transfer Agreement regulated the manner by which the shareholding of ElectroGas Ltd was to pass to Government in these circumstances.

10.2 Interim Bridge Facility and Initial Government Guarantee

10.2.1 According to information obtained from the Ministry for Finance, during mid-2014, it became apparent that for ElectroGas Ltd to secure funding on a non-recourse project financing basis,²⁶ the SSA was to be in place. In the NAO's understanding, although non-recourse financing is generally considered to be a relatively high-risk form of financing, as projects that utilise such financing ordinarily have uncertain revenue streams and long loan periods, this risk was to be mitigated by the revenue guaranteed through the SSA. However, Government decided that the SSA was not to be executed prior to clearance from the EC regarding whether the SSA constituted state aid. In this context, discussions were held regarding the possible provision of a Government Guarantee that was to allow the multi-lateral lending agencies (MLAs) to provide ElectroGas Ltd with an Interim Bridging Facility. The NAO sought to establish the basis for resort to non-recourse financing; however, queries addressed to ElectroGas Ltd remained unaddressed at the time of reporting.

10.2.2 On 3 September 2014, BoV notified MFIN that it, together with BNP Paribas Fortis NV/SA, HSBC Bank Malta plc and KfW IPEX-Bank GmbH, collectively the MLAs, was considering advancing to ElectroGas Ltd a bridging facility of €160,000,000 for the construction of the new gas power station. However, the terms of sanction required that the facility be secured by a guarantee issued by Government for up to 80 per cent of the amount, or €128,000,000, while the remaining 20 per cent was to be contributed by ElectroGas Ltd. This arrangement was deemed to represent an equitable allocation of risk by BoV.

10.2.3 Subsequently, the terms of negotiation were revised, with BoV agreeing to advance an interim bridge loan of €110,000,000 to ElectroGas Ltd in order to finance the initial project costs, including deposits owed under the EPC contracts. The Interim Bridge Facility was signed on 18 December 2014, with ElectroGas Ltd as the borrower and BoV as the lender. The final maturity date of the Interim Bridge Facility, which represented the date by which ElectroGas Ltd was to repay all principal as well as any interest and other costs, was set at 28 March 2015. One

²⁶ In non-recourse finance, a loan is secured by the revenue of the project the loan intends to fund, and nothing else. That is, non-recourse finance does not allow banks/lending institutions access to the borrower's other assets in the event of default.

of the conditions precedent stipulated in the Interim Bridge Facility was that the Government Guarantee was in full force and effect. This was in line with a Cabinet decision taken on 9 December 2014, whereby Cabinet authorised MFIN to provide the necessary guarantees and to appear on behalf of, and represent, Government on the documents relating to such guarantees and bridge loans as required for the project.

10.2.4 Also on 18 December 2014, MFIN sought clearance from the SAMB for the issue of the Government Guarantee in respect of 80 per cent of the €110,000,000 bridge loan, that is, €88,000,000. Indicated in this correspondence was that Government was to charge a margin of 50 basis points in respect of the guarantee. The proposed margin was deemed adequate by RSM Malta Consulting Ltd given the uncertainty and conditionality of the guarantee and was justified in estimating the cost of the Government Guarantee. In addition, MFIN informed the SAMB that, based on a review undertaken by PwC, ElectroGas Ltd was deemed financially sound in terms of EC guidelines on state aid for rescuing and restructuring firms in difficulty. Clearance by the SAMB was provided on 19 December 2014.

10.2.5 The Government Guarantee was entered into between Government as guarantor and BoV as the lender on 19 December 2014. This guarantee was intended as an interim measure, enabling commencement of the project, pending state aid clearance and the execution of the SSA. While the guarantee was to cover up to 80 per cent of the interim bridge facility that was to be provided by BoV, the remaining 20 per cent was to be covered by the shareholders of ElectroGas Ltd through letters of credit. In its role as guarantor, Government guaranteed to BoV the Government Supported Amounts, which comprised 80 per cent of all principal, interest, fees, costs and expenses, and any other sums payable or which could become payable to BoV by ElectroGas Ltd in relation to the €110,000,000 interim bridge loan, up to a maximum of €132,000,000.

10.2.6 Due to additional payment obligations, the Interim Bridge Loan Facility was increased from €110,000,000 to €137,500,000 on 28 May 2015. Various waivers that extended the final maturity date from 28 March 2015 to 28 May 2015 were executed on the request of ElectroGas Ltd. The final maturity date for the extended Interim Bridge Loan Facility was revised to 19 June 2015. A corresponding revision to the Government Guarantee was effected, accordingly reflecting the extended facility.

10.2.7 Until mid-2015, the EC had not yet issued its decision regarding whether the SSA constituted state aid, which in turn prohibited finalisation of this Agreement. In the NAO's understanding, without the SSA, ElectroGas Ltd could not secure the required financing to undertake the project, hence necessitating a revision in the bridge loan facility made possible through the Government Guarantee. It was in this context that the €137,500,000 Interim Bridge Facility was refinanced and replaced by a longer term facility. In the interim, BoV extended the credit term to ElectroGas Ltd while Government correspondingly authorised the Government Guarantee.

10.2.8 However, prior to entering into the longer term facility, Government sought to ascertain whether ElectroGas Ltd fell under the definition of a ‘firm in difficulty’ as per the EC Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01). To this end, PwC were engaged to assess ElectroGas Ltd in this respect and comment on the solvency of the Company. According to PwC, given that ElectroGas Ltd had not yet traded, it was difficult to apply the specific Community Guidelines that applied in the main to ongoing businesses that have encountered financial difficulty. A broader assessment was deemed necessary in assessing whether ElectroGas Ltd was able to meet its commitments as they arose. In this respect, PwC highlighted that:

- a. ElectroGas Ltd belonged to a consortium of investors of substance who had clearly indicated their interest in pursuing the project;
- b. the Consortium had, up till March 2015, invested or placed at risk total equity of €25,500,000, in terms of loans and letters of credit; and
- c. before the guarantee required from Government with respect to the longer term facility came into effect, the shareholders would have made available additional commitment, through the provision of letters of credit, for a further €68,000,000.

10.2.9 Therefore, PwC was of the opinion that ElectroGas Ltd would continue to receive further shareholder support required to undertake the proposed project. Furthermore, PwC indicated that ElectroGas Ltd was not a company in financial difficulty for the purposes of the Community guidelines on state aid for rescuing and restructuring firms in difficulty.

10.3 €450,000,000 Bridge Loan Facility Agreement

10.3.1 On 28 July 2015, ElectroGas Ltd, BoV, KFW IPEX-Bank GmbH, HSBC Bank Malta plc, Société Générale London Branch and Government entered into the €450,000,000 Bridge Loan Facility Agreement. Through this Agreement, ElectroGas Ltd, as the borrower, was provided with a term loan facility of €450,000,000 by the lenders, that is, BoV, KFW IPEX-Bank GmbH, HSBC Bank Malta plc and Société Générale London Branch. In addition to its role as a lender, BoV acted as facility agent and security trustee, on behalf of the other lenders. In turn, Government fulfilled the role of government guarantor.

10.3.2 Subject to the terms of the Bridge Loan Facility Agreement, the lenders were to make available to ElectroGas Ltd a term loan facility of €450,000,000. The facility, made available through a contribution of €112,500,000 by each of the lenders, was to be used for specific purposes, namely the:

- a. payment of financing costs;
- b. payment of project costs;

- c. payment of operating and maintenance costs;
- d. payment of success fee;
- e. provision of a performance bond pursuant to the terms of the IA;
- f. payment of agreed third party advisers' fees; and
- g. refinancing of the Interim Bridge Facility, standing at €137,500,000.

10.3.3 Stipulated in the Bridge Loan Facility Agreement was that no proceeds of any loan were to be utilised to refinance the guarantee fee. The guarantee fee was the fee to be charged by Government for the provision of the Government Guarantee.

10.3.4 The Bridge Loan Facility Agreement specified the purpose for which the amount borrowed was to be utilised following Full Accession, that is, the point at which Government assumed the role of borrower. Stated in this respect was that the only permitted use of the facility's proceeds by Government was the advance of proceeds to ElectroGas Ltd, which proceeds were then to be utilised for the purposes listed at 10.3.2 (a) to (f). Notwithstanding this, none of the finance parties were bound to monitor the utilisation of the amounts borrowed.

Utilisation Request

10.3.5 The Agreement stipulated that ElectroGas Ltd was only allowed to submit a Utilisation Request, that is, a request for a loan, once BoV, as the facility agent, was in receipt of all required documentation. This included the original Government Guarantee, a copy of the constitutional documents of ElectroGas Ltd, a copy of the share register confirming that the shareholders of ElectroGas Ltd were Socar Trading SA, GEM Holdings Ltd and Siemens Project Ventures GmbH, each with a holding of 33.33 per cent, standby letters of credit and the EC's decision that the SSA did not constitute state aid or that pre-notification discussions regarding state aid had commenced.

10.3.6 Specified in the Bridge Loan Facility Agreement was that ElectroGas Ltd was not to submit to BoV more than one utilisation request per month. Utilisation requests were to be made in euro. Proposed loans were not to exceed the lenders' aggregate available commitment; however, were to be in excess of the minimum threshold of €1,000,000. Each utilisation request was irrevocable and would be considered complete if:

- a. it indicated the facility to be utilised;
- b. the proposed utilisation date fell within the availability period, that is, the date of the Bridge Loan Facility Agreement (28 July 2015) and the Final Maturity Date (originally set at 28 May 2017), subsequently extended to 29 December 2017;

- c. the currency, amount, and interest periods complied with the terms specified in the Bridge Loan Facility Agreement; and
- d. it specified that the loan was repayable by the Final Maturity Date, that is, 29 December 2017.

Lenders' Participation

10.3.7 Cited in the Bridge Loan Facility Agreement were the conditions that would oblige the lenders to contribute to the loan if, on the delivery of the utilisation request:

- a. the proposed loan was not or would not result in default;
- b. representations were true in all material respects, duly supported by references;
- c. the lenders' technical advisor confirmed to the lenders and ElectroGas Ltd that:
 - i. the last progress report delivered by ElectroGas Ltd provided a true picture of the status of the project;
 - ii. in the technical advisor's opinion, the simple and combined cycles taking over certificates were likely to be issued within six months of the completion dates stipulated in the EPC 1 Contract (15 December 2014), while the taking over certificate within six (6) months from the dates stipulated in the EPC 2 Contract (23 December 2014);
 - iii. where the loan was intended to finance project costs and/or operating and maintenance costs, amounts were due and payable within 30 days from the date of utilisation;
- d. acceptable credit support, that is, letters of credit or cash collateral equivalent to 105 per cent of 20 per cent of €450,000,000 was provided before full accession, with each standby letter of credit and the Government Guarantee being in full force and the cash collateral having been deposited in a BoV account, in terms of its role as security trustee; and
- e. no event or circumstance took place, which, according to the majority lenders, would have negatively affected the ability of ElectroGas Ltd to comply with its payment and performance obligations.

10.3.8 On fulfilment of all the conditions referred to in the preceding paragraphs, and following notification by BoV, acting as the facility agent, the lenders were to provide their respective participation in the loan. Each lender's participation was to be equal to the respective proportion of available commitment to the available facility.

Repayment, Prepayment and Cancellation

10.3.9 Interest on each loan was payable by ElectroGas Ltd on the last day of the respective interest period, set at three months from the utilisation date, unless otherwise agreed by ElectroGas Ltd and the lenders. On the other hand, ElectroGas Ltd was to repay the principal and any outstanding interest and/or other financing costs in full on the final maturity date, that is, by May 2017, later extended to December 2017.

10.3.10 In line with the provisions of the Bridge Loan Facility Agreement, ElectroGas Ltd was to inform BoV, as the facility agent, of the date on which it received the proceeds of the first drawdown of the Permanent Financing. Permanent Financing was defined as limited recourse project financing of all or any material part of the project.

10.3.11 Also specified in the Bridge Loan Facility Agreement was that ElectroGas Ltd could cancel all or part of the available facility provided that prior notice was given to BoV as the facility agent. Similar provisions regulated the voluntary prepayment of loans. Any notice of cancellation or prepayment was irrevocable. Mandatory cancellation of all available commitments was to automatically come into effect on the last day of the availability period.

Change of Control

10.3.12 The Bridge Loan Facility Agreement set out the procedures to be adopted on any changes in the direct or indirect legal and beneficial interest held in ElectroGas Ltd by Siemens Project Ventures GmbH, Socar Trading SA and GEM Holdings Ltd as at 28 July 2015. In the event of any such change, BoV, as the facility agent, was to be informed by any of the lenders and/or ElectroGas Ltd, and in turn was to notify the other parties. Moreover, except where such change of control was deemed a permitted change of control, on BoV's notification, the lenders' available commitments would be immediately cancelled, and ElectroGas Ltd would repay, in full, outstanding loan amounts.

10.3.13 Permitted change of control referred to:

- a. a transfer between any of the sponsors, namely, Socar Trading SA, GEM Holdings Ltd and Siemens Project Ventures GmbH, provided that the minimum shareholding requirements would not be contravened on completion of said transfer;
- b. a transfer by a sponsor to an affiliate, provided that the ultimate holding company of the transferring sponsor continued to hold the same aggregate percentage interest in ElectroGas Ltd held prior to the transfer;
- c. a transfer required by law, court order, tribunal or governmental authority having appropriate jurisdiction;
- d. a transfer in favour of Government, as government guarantor, arising as a result of an accession mechanism; or

- e. a transfer approved by BoV, as the facility agent, on the instructions of the majority lenders.

10.3.14 In a permitted change of control, other than a full accession, BoV, as the security trustee, was under no obligation to release pre-existing standby letters of credit or cash collateral provided by the transferring sponsor until replacement credit was provided. Existing standby letters of credit or cash collateral were to be released by BoV within five business days from which ElectroGas Ltd procured replacement acceptable credit support. The Bridge Loan Facility Agreement granted ElectroGas Ltd the right to replace a defaulting lender by providing five business days' prior notice to BoV, as the facility agent.

Interest and Interest Periods

10.3.15 Interest payable by ElectroGas Ltd on each loan, on the last day of each interest period was set as the annual percentage rate, which was to be determined as the aggregate of:

- a. the margin, that is, 125 basis points per annum; and
- b. EURIBOR.

10.3.16 If ElectroGas Ltd failed to pay any amount payable, interest on outstanding amounts was to accrue from the due date till that of actual payment. Interest incurred in this respect was set at 200 basis points higher than the rate payable and became payable on demand of BoV, as facility agent. Unpaid default interest was to be compounded to the outstanding overdue amount at the end of each applicable interest period.

10.3.17 Specified was that each interest period for any loan was to start on the date on which the loan was provided. In the case of an existing loan, the last day of the previous interest period was to be considered as the start date. No interest period could be extended beyond May 2017, later extended to December 2017, that is, the Final Maturity Date.

Costs and Fees

10.3.18 Contemplated in the Bridge Loan Facility Agreement were break costs. These costs represented the amount by which interest, excluding the margin, received through participation in a loan exceeded the amount that would have been received by the lender had this amount been deposited in a leading bank in the European interbank market. ElectroGas Ltd was to pay break costs within three business of demand by a lender.

10.3.19 ElectroGas Ltd was to pay each lender the fee established in their respective fee letters. In addition, ElectroGas Ltd was to pay BoV, as the facility agent, for the account of each original lender, a commitment fee equivalent to 50 basis points per annum on the balance of the undrawn commitments. The commitment fee was to be calculated from the date of the Bridge Loan Facility Agreement and the final maturity date, that is, 28 July 2015 to 28 May 2017, later

extended to 29 December 2017. Furthermore, ElectroGas Ltd was to pay all fees incurred in relation to this Agreement, corresponding to the lenders’ technical adviser, the legal, accounting and insurance advisers, the gas markets consultants and the model auditors, if appointed by the finance parties.

10.3.20 Also specified in the Bridge Loan Facility Agreement was that ElectroGas Ltd was to pay BoV, as the facility agent, on behalf of a finance party, an amount reflecting any increased costs incurred by that finance party arising as a result of the introduction of, changes to, or compliance with laws and regulations made after the date of the Agreement. Increased costs comprised a reduction in the facility’s rate of return or in the finance party’s overall capital, additional costs, including tax, and a reduction in amounts payable under the finance documents. In addition, increased costs were to be supported by a certificate provided by the respective finance party.

10.3.21 Transactions expenses were to be paid by ElectroGas Ltd out of the proceeds of the first utilisation. Amounts payable in this respect included any amounts due under the fee letters, as well as commitment and work fees, interest, and other payments incurred by the original lenders, the facility agent and security trustee in relation to the negotiation, preparation and execution of the Bridge Loan Facility Agreement and any other finance documents entered into during the same period. Moreover, if ElectroGas Ltd requested an amendment, it was to reimburse BoV, as the facility agent, for the amount of all reasonable and documented costs and expenses incurred in responding to the request. Similarly, ElectroGas Ltd was to pay each finance party for expenses incurred in connection with the enforcement of any finance document.

Indemnities

10.3.22 The Bridge Loan Facility Agreement stipulated provisions relating to the conversion of currency. Should any sum payable by ElectroGas Ltd under the finance documents, or any order, judgement or award result in any cost, loss or liability arising out of a discrepancy in currency conversion and the rates of exchange available, then ElectroGas Ltd was obligated to accordingly indemnify the finance party.

10.3.23 ElectroGas Ltd was to compensate the relevant finance party for any losses incurred as a direct result of any of the following:

- a. the occurrence of any event of default (paragraph 10.3.31 refers);
- b. the failure by ElectroGas Ltd to pay any amounts under the finance documents when due;
- c. funding a loan requested by ElectroGas Ltd not made in terms of the Bridge Loan Facility Agreement; or

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- d. default of ElectroGas Ltd resulting in a loan or part thereof not being prepaid in accordance with a notice of prepayment.

10.3.24 In addition, ElectroGas Ltd was to compensate each agent for reasonable and substantiated expenses, including legal fees, incurred as a direct result of the following:

- a. investigating any event believed to be an event of default;
- b. acting or relying on documentation reasonably believed to be genuine, correct and appropriately authorised; or
- c. instructing professional advisers as permitted under the terms of the Bridge Loan Facility Agreement.

Representations

10.3.25 ElectroGas Ltd made representations and warranties to each finance party on the date of the Bridge Loan Facility Agreement. Cited in this respect was that the obligations specified in the finance documents were legal, binding and enforceable and were not in conflict with other standing agreements, laws or regulations which would negatively affect the ability of ElectroGas Ltd to comply with the stipulated obligations.

10.3.26 In addition, as from 18 December 2014, that is, the date of the €110,000,000 Interim Bridge Facility Agreement entered into between ElectroGas Ltd and BoV, the project's development was in line with standing environmental and social principles, which principles were to be upheld in the negotiations related to long-term financing. Further warranted in the Bridge Loan Facility Agreement was that the payment obligations assumed under the finance documents ranked pari passu with all unsecured and unsubordinated claims, except for those preferred by law.

Information Undertakings

10.3.27 The Bridge Loan Facility Agreement regulated information that was to be submitted by the parties from the date of the Agreement until any amount remained outstanding under the finance documents, or any commitment was in force. ElectroGas Ltd was to provide the BoV, as the facility agent, with copies of the audited financial statements within 120 business days from the financial year-end. In addition, ElectroGas Ltd was to provide BoV with:

- a. all documentation submitted to its creditors;
- b. details of material litigation, arbitration or administrative proceedings, in force or pending against it, and current, pending or threatened proceedings against Enemalta, Socar Trading

SA, GEM Holdings Ltd and Siemens Project Ventures GmbH, which could have a material adverse affect; and

- c. any other information concerning its financial position, business and operations requested by any of the finance parties.

10.3.28 ElectroGas Ltd was to notify BoV, as the facility agent, of any default. Moreover, on the request of BoV, ElectroGas Ltd was to provide a certificate, confirming that no default was continuing or any remedial action being taken. In addition, provisions in the Bridge Loan Facility Agreement regulated the periodical reporting by ElectroGas Ltd of environmental considerations and progress registered with respect to the project. Budgetary reports were also to be submitted by ElectroGas Ltd to the lenders’ technical adviser on a quarterly basis, indicating estimated project, operation and maintenance costs. Similarly, quarterly funding shortfall forecasts were to be submitted by ElectroGas Ltd to BoV. Each funding shortfall forecast report was to be drawn up in accordance with the budget and assumptions included in the financial model prepared by ElectroGas Ltd, and in line with the latest progress reports.

10.3.29 In the event that any funding shortfall forecast indicated a shortfall in excess of €5,000,000, ElectroGas Ltd was to provide a rectification plan and evidence that Socar Trading SA, GEM Holdings Ltd, Siemens Project Ventures GmbH, or any other third party, committed to fund the said shortfall. Evidence of the sourcing of sufficient funding was to be provided within 30 days and the rectification plan was to be implemented within 60 days of the relative funding shortfall effective date.

General Undertakings

10.3.30 The Bridge Loan Facility Agreement included further undertakings that were to remain binding until any amount was outstanding or any commitments were in force. ElectroGas Ltd was bound to:

- a. obtain authorisations required, enabling it to carry out its obligations under the finance and project documents;
- b. comply with all laws that would otherwise impair its ability to perform its obligations under the finance documents;
- c. not incur, prior to full accession, any financial indebtedness, other than that allowed in the finance documents and long-term financing;
- d. not provide any of its assets as security, and refrain from entering into any transaction or arrangement intended to finance the acquisition of an asset or raise financial indebtedness prior to full accession;

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- e. refrain from selling or transferring any asset prior to full accession other than a permitted disposal;
- f. act in line with good industry practices at all stages of the project, ensuring compliance with environmental laws;
- g. observe anti-corruption laws;
- h. refrain from making any distributions out of the loan proceeds prior to full accession other than the success fee of an aggregate maximum amount of €12,500,000 payable to Socar Trading SA, GEM Holdings Ltd and Siemens Project Ventures GmbH, which fee was to be paid out of the proceeds of the first utilisation;
- i. negotiate and finalise the project documents by the long-term financing longstop date, that is, 28 April 2017;
- j. ensure that hedging agreements prior to full accession are only entered into prudently, as a means of protection or in order to benefit from price fluctuations and were to be entered into solely with BoV, KfW IPEX-Bank GmbH, HSBC Bank Malta plc and Société Générale London Branch;
- k. abide by all provisions regulating the subordination of debt until all outstanding amounts were settled or full accession took place;
- l. agree or permit any amendment to, variation or waiver of any of the terms or conditions in any project document to which it is party, without the consent of BoV, as the facility agent;
- m. respond promptly to the EC, providing information requested in relation to the state aid package and inform the majority lenders of any developments thereto. Moreover, should there be any indication that the terms and pricing of the guarantee fee were not in line with similar guarantees, ElectroGas Ltd and Government, as government guarantor, were to increase the guarantee fee to bring it in line with market prices, with the adjustment having a retrospective effect. Similarly, Government and all lenders were to renegotiate the margin of 125 basis points per annum to reflect market prices in the event that the terms and pricing of the Bridge Loan Facility Agreement were no longer in line with standing market conditions for similar government loans; and
- n. ensure that any proceeds arising from the Bridge Loan Facility Agreement are not utilised to finance any trade or activity involving or for the benefit of any restricted party, namely anyone subject to sanctions, located or organised in a country subject to sanctions, or included in, owned or controlled by a person on a sanctions list, or use the proceeds in a manner that would result in ElectroGas Ltd, a subsidiary or a majority lender breaching such sanctions. ElectroGas Ltd also committed to implement and maintain adequate controls to ensure compliance in this respect.

Events of Default

10.3.31 The following circumstances were deemed to constitute an event of default, in terms of the Bridge Loan Facility Agreement, prior to full accession:

- a. non-payment of amounts stipulated in the finance documents as they fall due by ElectroGas Ltd, or Government, as government guarantor, unless non-payment is attributable to administrative or technical error or a disruption event;
- b. the issuer of any standby letter of credit is prevented or delayed in the performance of any of its obligations due to any action or omission attributable to ElectroGas Ltd, its sponsors, or Government;
- c. ElectroGas Ltd does not comply with its obligations under the finance documents in any material respect and such breach is not remedied within 30 days of notification. In case of environmental non-compliance, ElectroGas Ltd was to remedy such instances within 60 days of notification;
- d. financial indebtedness, insolvency and insolvency proceedings, as well as misleading representations made by ElectroGas Ltd;
- e. obligations assumed by Government or ElectroGas Ltd in connection with the government guarantee and any other finance document, respectively, become void or unenforceable, and alternative arrangements to the satisfaction of BoV, as the facility agent, are not made within 30 days from notification;
- f. repudiation by ElectroGas Ltd or Government of a finance document or the performance of obligations stipulated therein becomes unlawful;
- g. abandonment of the project facilities by ElectroGas Ltd;
- h. ElectroGas Ltd or any of its representatives offered, paid, or agreed to pay any illegal gift, commission or consideration in connection with the project;
- i. immunity claimed by ElectroGas Ltd or Government, and expropriation of the facilities or the share capital by the latter;
- j. any standby letter of credit is cancelled, expires, becomes invalid or unenforceable, or the issuer ceases to have an acceptable credit rating;
- k. the documentation required for the long-term financing is not signed;

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- l. any material breach by ElectroGas Ltd or any of its sponsors of provisions regarding subordination;
- m. where forecasts indicate a funding shortfall of more than €45,000,000, or ElectroGas Ltd fails to take remedial action thereto; and
- n. any breach of the provisions related to sanctions.

The Bridge Loan Facility Agreement specified the remedies available to the lenders in case of an event of default.

10.3.32 On the other hand, events of default post accession, that is, when Government assumed the capacity of the borrower instead of ElectroGas Ltd, comprised:

- a. non-payment of any amount payable pursuant to the finance documents on the due date, unless non-payment is attributable to administrative or technical error or a disruption event;
- b. Government, as the borrower, does not comply with its obligations under the finance documents in any material respect and such breach is not remedied within 30 days of notification. In case of environmental non-compliance, Government was to remedy such instances within 60 days of notification;
- c. any representation or statement made deemed to be incorrect or misleading in any material respect that remains unaddressed for a period of 30 days from notification;
- d. in the event that any finance document ceases to be in full force and effect or ceases to be a valid and binding obligation of Government, or becomes void or unenforceable;
- e. Government is unable to pay debts as they fall due, stops or suspends payments of debts or declares a moratorium in respect of any indebtedness;
- f. repudiation by Government of a finance document or the performance of obligations stipulated therein becomes unlawful;
- g. abandonment of the project facilities by Government;
- h. Government or any of its representatives offered, paid, or agreed to pay any illegal gift, commission or consideration in connection with the project;
- i. immunity claimed by Government;
- j. the documentation required for the long-term financing is not signed;

- k. any breach of the provisions related to sanctions; and
- l. any standby letter of credit is cancelled, expires, becomes invalid or unenforceable, or the issuer ceases to have an acceptable credit rating.

Changes and Roles of the Parties

10.3.33 Also stipulated in the Bridge Loan Facility Agreement were provisions applicable in the case of a change in the lenders or the borrower, that is, ElectroGas Ltd, regulating their respective transfer of rights and obligations. It was permissible for any of the lenders to assign any of their rights or transfer by novation their rights and obligations to another bank or financial institution. On the other hand, ElectroGas Ltd was not entitled to assign any of its rights or transfer any of its rights and obligations under the finance documents. Outlined in the Agreement were the procedures to be adhered to in the case of transfer or assignment by the lenders.

10.3.34 Specified in the Bridge Loan Facility Agreement was the role of the facility agent and the security trustee. Both roles were fulfilled by BoV in this case. Each finance party was to appoint a facility agent to act as its agent under and in connection with the finance documents. The facility agent’s duties were mechanical and administrative in nature, effectively tasked with abiding by instructions given to it by the lenders in the exercise of any right, power, authority or discretion specifically vested in it. Similarly, the role, rights and obligations of the security trustee were also outlined. Again, each finance party was to appoint the security trustee to act on its behalf under and in connection with the finance documents. In essence, the security trustee was to hold the benefit of the acceptable credit support and the government guarantee on trust for the finance parties on the terms stipulated in the Agreement. Also noted was that the duties of the security trustee were solely mechanical and administrative in nature and did not render the security trustee an agent, trustee or fiduciary of ElectroGas Ltd or Government.

10.3.35 Amounts received by the security trustee from the enforcement of acceptable credit support and/or the government guarantee were to be held on trust and applied in a specified order. Stipulated in the Bridge Loan Facility Agreement was the procedure to be adopted for demands by the lenders under the acceptable credit support and the government guarantee, or directly from Government after full accession, with the power to access the said support and/or guarantee vested solely in the security trustee. Demands by the security trustee following requests by the lenders for the payment of outstanding loans and costs related to the collection thereof, as well as pending finance costs as a result of an event of default, were to be split between the government guarantor and the issuers of the standby letters of credit or cash collateral. Government’s exposure was limited to 80 per cent of the total amount claimed, while the providers of credit support were to cover the remaining 20 per cent. However, if full accession had taken place, the entire amount was to be claimed from Government, up to the thresholds of the government supported amounts, that is, 80 per cent of all outstanding amounts payable by ElectroGas Ltd to the finance parties, and the sponsors’ agreed portion of the sponsor supported amount.

10.3.36 Indicated in the Bridge Loan Facility Agreement was that the fiduciary relationship between BoV, as the security trustee, and the finance parties, including the benefit of the acceptable credit support and the government guarantee, held on trust by the former for the benefit of the finance parties, and any other trust under the finance documents had a perpetuity period of 80 years.

Full Accession

10.3.37 The Bridge Loan Facility Agreement covered the accession mechanism whereby, on the occurrence of any of the accession triggers, the role of Government would automatically change from that of guarantor to borrower. In so doing, Government would assume the rights, obligations and liabilities of ElectroGas Ltd as from 28 July 2015, under the terms of this Agreement, releasing ElectroGas Ltd therefrom. Consequently, ElectroGas Ltd would immediately become a debtor of Government for an amount equivalent to the obligations assumed in its role as guarantor, according to the provisions of the Accession Compensation Agreement.

10.3.38 Further specified in this regard was that, on accession, the government guarantee would have ceased to have any effect and BoV, as the security trustee, was to return the guarantee to Government, releasing it from the obligations stipulated therein. Accession was deemed irrevocable and Government's liability under the Bridge Loan Facility Agreement, as government guarantor, was to remain in force until all outstanding loans, finance costs and related collection costs were settled in full. Moreover, until assumption of the role of borrower, Government was not entitled to any additional rights other than those provided to the government guarantor in the government guarantee.

10.3.39 On completion of the share transfer formalities, or failure by Government to submit the transfer notice to the transferors within three business days from an accession trigger informing them that the share transfer came into force, any claims by the security trustee in relation to outstanding loans, finance costs or related collection costs were to be fully charged against Government, in its capacity as borrower. Neither Government nor ElectroGas Ltd were to incur any additional fees or costs in relation to the implementation of the accession mechanism.

Accession Triggers

10.3.40 Stipulated in the Bridge Loan Facility Agreement were the events that would constitute an accession trigger. These comprised:

- a. initiation of proceedings against Malta by the EC in relation to the government guarantee;
- b. any decree, warrant or judgement delivered in a national court in response to an application challenging the lawfulness of the government guarantee or the obligations stipulated therein, invalidating the enforceability of the said guarantee, which judgement is not

successfully challenged by the Government within forty calendar days from its delivery; and

- c. in relation to the state aid package submitted by Government for the approval of the EC:
 - i. no decision was issued by the EC under Article 4(2), Article 4(3), Article 7(2) or Article 7(3) of the Procedural Regulations four months prior to the final maturity date, that is, 28 January 2017;
 - ii. a conditional decision under Article 7(4) of the Procedural Regulations issued by the EC considered unacceptable to the majority lenders; or
 - iii. a negative decision under Article 7(5) of the Procedural Regulations issued by the EC.

Other Provisions

10.3.41 The Bridge Loan Facility Agreement stipulated the provisions applicable for the settlement of dues payable under the finance documents, specifying that payments were to be effected to BoV, as facility agent, in line with terms set. Any amounts paid by ElectroGas Ltd were to be calculated and paid without any deductions for set-off or counterclaims. The Agreement also provided for situations where the amounts paid by ElectroGas Ltd were insufficient to cover all amounts due under the finance documents, indicating the allocation policy, specifying how available funds were to be utilised.

10.3.42 Other provisions cited in the Bridge Loan Facility Agreement addressed amendments, waivers and the procedures applicable in case of defaulting lenders. Confidentiality considerations were addressed, indicating the circumstances and to whom information could be disclosed. Also noted was that the obligations regulating confidentiality were to persist and remain binding on each finance party for 12 months from the earlier of the date when all amounts payable by ElectroGas Ltd were settled and commitments cancelled, or the date on which a finance party ceases to be so. Also stipulated was that Government waived any right of immunity from legal proceedings initiated by the facility agent, the security trustee or any finance party against it or its assets, yet excluding immunity over certain asset classes.

10.4 Government Guarantee

10.4.1 Following the refinancing of the bridge loan and the establishment of the €450,000,000 Bridge Loan Facility, changes were made to the corresponding government guarantee. In fact, on 31 July 2015, a deed was entered into between Government as Government Guarantor, BoV as the facility agent and security trustee, and ElectroGas Ltd as the Borrower. Acknowledged was that the finance parties, namely, BoV, HSBC Bank Malta plc, KfW IPEX-Bank GmbH and Société Générale London Branch had agreed to make the Facility available to ElectroGas Ltd in accordance with the terms of the €450,000,000 Bridge Loan Facility Agreement. The Facility was contingent on Government providing to BoV, as security trustee and facility agent of the other finance parties, a Government Guarantee as established in this Deed.

10.4.2 In consideration of the finance parties entering into the Finance Documents, that is, the Facility Agreement, standby letters of credit, fee letters and other documents designated as such, Government irrevocably and unconditionally:

- a. guaranteed to BoV, as the security trustee, as principal obligor and not merely as surety, prompt payment by ElectroGas Ltd of any amounts due and outstanding under the Finance Documents up to the Government Supported Amounts to the finance parties when due;
- b. undertook that if and whenever ElectroGas Ltd was in default in the payment of any sum whatsoever under the Finance Documents, then Government would pay any amounts due and outstanding together with interest thereon; and
- c. indemnified BoV immediately on demand against any cost, loss or liability suffered by any finance party if any obligation guaranteed by it was or became unenforceable, invalid or illegal.

Notwithstanding the above, BoV was to make a demand for payment of amounts due and outstanding under the Finance Documents against ElectroGas Ltd in the first instance before making a demand on Government under the terms of this Deed.

10.4.3 The Government Guarantee was subject to two conditions. First, the maximum liability of Government under this Deed was capped at €432,000,000. Second, that the due date for payment was the date of the relevant demand. The only exception to this were instances where a demand for payment met the following conditions, where:

- a. the relevant demand was made as a result of the loan falling due before the final maturity date, that is, May 2017 (later extended to December 2017), established as 22 months from the execution of the Bridge Loan Facility Agreement on 28 July 2015, which would render notice served a Relevant Acceleration Notice;
- b. the Relevant Acceleration Notice was served following the occurrence of certain events of default; and
- c. Government was given less than 45 calendar days' notice of the default that constituted or gave rise to the default.

Under these conditions, the due date for payment was 45 calendar days after the date of the relevant demand or, if earlier, 45 calendar days after Government was notified by BoV, as the facility agent, of the default.

10.4.4 The Deed was a continuing guarantee and was to extend to the ultimate balance of sums payable by ElectroGas Ltd under the Finance Documents, up to the Government Supported Amounts, regardless of any intermediate payment or discharge in whole or in part. The Deed

also stipulated that if a finance party discharged, released or made an arrangement in whole or in part in respect of any payment, security or other disposition that was to be avoided or restored in case of insolvency, liquidation, administration or otherwise, then the liability of Government under this Deed was to continue or be reinstated as if the discharge, release or arrangement had not occurred.

10.4.5 The obligations of Government emanating from this Deed were not to be affected by an act or omission that could reduce, release or otherwise exonerate Government from its obligations, including:

- a. any time, waiver or consent granted to, or composition with, ElectroGas Ltd or any other person;
- b. the release of ElectroGas Ltd or any other person under the terms of any composition or arrangement with any of its creditors;
- c. the variation, exchange, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against ElectroGas Ltd or any other person;
- d. any legal limitation, disability, incapacity or other circumstances relating to ElectroGas Ltd or any other person;
- e. any variation, other than those specified in the Deed, to the Facility Agreement or any other document or security so that such variations would be comprehensively reflected;
- f. any unenforceability, invalidity or the non-fulfilment of obligations of ElectroGas Ltd or any other person under the Finance Documents or other document or security; and
- g. any insolvency or similar proceedings.

10.4.6 Specified in the Deed was that until all amounts which were or became payable by ElectroGas Ltd had been paid and discharged in full, then BoV, as the security trustee, and each finance party could refrain from enforcing any other security or right held or received in respect of such amounts, which benefit Government was not entitled to. Furthermore, BoV and each finance party could hold in a suspense account any moneys received from Government or on account of Government's liability.

10.4.7 Without prejudice to the waivers specified in paragraph 10.4.5, Government expressly confirmed that it intended that the guarantee could be extended from time to time to any variation to or addition of any Finance Document. Nonetheless, this was not to apply to any variation or addition requiring the prior consent of Government, where such consent was not obtained. Save for the provisions relating to the guarantee and indemnity specified in paragraph 10.4.2 and those relating to the payment due date specified in paragraph 10.4.3, Government waived

any right of requiring BoV or the finance parties to first proceed against or claim payment from any third party before making such claims from Government.

- 10.4.8 In clarifications obtained from MFIN, it was stated that the guarantee was intended to be a joint and several guarantee and accordingly, the lenders could have turned for payment from the joint and several guarantor without having to enforce any other right they might have had. Even though the Deed referred to a waiver by Government, the understanding was always that the guarantee would be a joint and several one. MFIN asserted that this followed the principle of Maltese law that the benefit of discussion did not apply when a surety had bound himself, jointly and severally, with the debtor. Furthermore, it was the market practice for such guarantees to be undertaken on a joint and several basis without the benefit of discussion.
- 10.4.9 The Deed also contemplated the deferral of Government's rights as guarantor. Until all dues payable by ElectroGas Ltd as per the Finance Documents were paid in full, should ElectroGas Ltd default and a claim had been made, then Government was not to be subrogated to any rights, security or moneys received or receivable by BoV or the finance parties. However, Government was entitled to claim as a creditor and rank together with the other finance parties in the case of bankruptcy or liquidation of ElectroGas Ltd, provided that Government immediately paid BoV, on behalf of the finance parties, an amount equivalent to any payment received as a result of such claim. Emphasised was that these provisions did not prevent Government from exercising its rights under the Share Call Option Agreement.
- 10.4.10 This Deed was in addition to and was not to be prejudiced by any other security held by BoV or any finance party as security for the obligations of ElectroGas Ltd under the Finance Documents. The obligations of Government towards each finance party under this Deed are granted to BoV, as the security trustee, for the benefit of each finance party.
- 10.4.11 Acting on behalf of the finance parties, BoV committed to Government that until Full Accession and the completion of all Share Transfer Formalities, it was not to amend or waive any right that it had under the Finance Documents without first obtaining Government's consent. Full Accession referred to the date when Government agreed to assume all rights, obligations and liabilities of ElectroGas Ltd and in so doing release the latter from the same rights, liabilities and obligations. The Share Transfer Formalities were to be considered complete on submission of the documents cited in paragraph 10.8.5 by GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA to Government. This provision was applicable to any amendment or waiver that:
- a. would delay the date fixed for the payment of the principal, interest and other fees payable under the Finance Documents, or reduce or alter the method of calculation thereof;
 - b. would result in the release of any of the Acceptable Credit Support, unless equivalent replacement security is taken or the release is permitted;

- c. would result in ElectroGas Ltd becoming liable to make any additional payments to the finance parties that do not arise from or are not contemplated in the original terms of the Finance Documents;
- d. would result in the designation of a document as a Finance Document;
- e. would result in the increase of the amount of Total Commitments, defined in the Bridge Loan Facility Agreement as €450,000,000, or change the purpose of amounts borrowed under the Facility;
- f. would result in an increase in the rate, manner or currency in which any interest, fees or other amounts are accrued, calculated or fall due for payment;
- g. would result in a change or elimination of any right of the finance parties to receive any payment;
- h. would result in bringing forward the date fixed for the payment of principal or interest;
- i. granted in terms of specific provisions cited in the Share Transfer Agreement and the Share Call Option Agreement; and
- j. would result or was likely to prejudice the position of Government.

10.4.12 The Deed provided for adjustments that could be made to the Guarantee Fee in certain conditions. If at, or prior to, the execution of the Facility Agreement, the Fairness Opinion, that is, the opinion of an international accountancy or audit firm about the pricing of the guarantee as prepared for the Original Lenders indicated that the terms and pricing of the guarantee did not conform with prevailing market conditions for guarantees of a similar nature, Government and ElectroGas Ltd were to promptly increase the Guarantee Fee by the amount recommended in the Fairness Opinion. On the other hand, if at any point after execution of the Facility Agreement and during a preliminary investigation by the EC, the Commission similarly indicated non-conformity, then Government and ElectroGas Ltd were to immediately increase the Guarantee Fee by the amount recommended by the Commission. Any price adjustment was to have retrospective effect as of the date of execution of the Government Guarantee. Although the fee to be charged under the Guarantee was not specified in the Deed, the NAO established that this amounted to approximately €11,000,000. Further details regarding how the fee was determined are presented in section 10.5.

10.4.13 Without prejudice to its rights as security trustee, BoV, acting as the facility agent, was to notify Government, as soon as reasonably practicable, of any default and the inability of ElectroGas Ltd to satisfy the conditions precedent to the utilisation of the Facility as set out in the Facility Agreement. Furthermore, on request by Government, BoV was to provide information relating to the outstanding Total Commitments, confirmation by the lenders' technical adviser as

stipulated under the Facility Agreement and copies of other specified documents. In addition, BoV was to provide Government with a copy of requests made by it, as the facility agent, for certificates issued in relation to notifications of default as well as the actual certificates. Any breach or failure by any finance party in this respect was not to invalidate the provisions of the Deed or the rights of BoV as the security trustee and Government waived any claim against any finance party for breach of this provision.

10.4.14 Subject to the provisions relating to reinstatement cited in paragraph 10.4.4, BoV, as the security trustee, was to fully, irrevocably and unconditionally release Government from all further obligations and liabilities under this Deed on the earlier of:

- a. the date on which there were no Available Commitments, that is, lenders' commitments less their participation in any outstanding loans, and no Government Supported Amounts, whether actual or contingent, payable by ElectroGas Ltd to any finance party; and
- b. the date on which an Accession Trigger occurs.

10.4.15 Also stipulated were the provisions regulating payments under this Deed. Among others, specified was that the currency of payments was to be in euro and that all payments made by Government under this Deed were to be made without set-off or counterclaim. Further stated was that, should any tax or other amounts be deducted from any amounts payable or paid by Government, or paid or payable by BoV to a finance party, then Government was to pay such additional amounts to ensure that the net amount received by the relevant finance party was equal to the full amount had such deductions not been made.

10.4.16 The Deed outlined the representations and warranties made by Government to BoV for the benefit of the finance parties. In particular, Government affirmed that it had the power and authority to enter into and perform this Deed and the transactions contemplated hereby. Furthermore, the Deed constituted a legal, valid and binding obligation of Government, enforceable in accordance with its terms. Stated was that no event had occurred which constituted a default, or that might reasonably be expected to constitute a default, which might have a material adverse effect on Government's ability to perform its obligations. Other provisions highlighted the pari passu ranking of Government's obligations, the non-confliction of the Deed and its provisions with standing laws and regulations, as well as matters of consent, litigation, stamp duty and taxes.

10.4.17 Further specified in the Deed were the undertakings that were to remain in force from and after the date of the Deed, up to the point when any amount under the Facility Agreement remained outstanding. Government was to furnish to BoV, as the facility agent, information required to determine Government's financial capability to meet its obligations under this Deed. Moreover, Government was not to claim or assert any right of immunity from set-off, suit or execution in respect of its obligations.

10.4.18 According to the Deed, any term could be amended or waived with the agreement of Government, ElectroGas Ltd and BoV, as the facility agent, acting on instructions of the Lenders. In addition, the rights of BoV as the security trustee and facility agent, as well as any finance party in terms of seeking remedy could be exercised as often as necessary, were cumulative and could only be waived in writing.

10.4.19 Government could not assign or transfer all or any of its rights or obligations under this Deed without the prior written consent of the finance parties. However, Government and ElectroGas Ltd consented to any change in the composition of the finance parties made in terms of the Facility Agreement. Similar consent was given to the possible replacement of BoV as the original facility agent and security trustee. On its part, ElectroGas Ltd could not assign or transfer all or any of its rights or obligations under this Deed without the prior written consent of the finance parties and Government.

10.4.20 If any amount payable by Government is made to BoV, as the security trustee, or any finance party in a currency other than euro, then certain provisions were to apply. If the amount produced as a result of conversion was less than that agreed to be payable, then Government was to provide indemnity for the loss sustained. On the other hand, if the amount was more than that agreed, then BoV was to pay Government any portion received and retained by it, provided that no event of default had occurred. In addition, noted in the Deed was that BoV was to determine the date and market most appropriate for such conversion, while Government was to bear conversion costs. Also stipulated was that each finance party could set-off, against any obligation of Government due, any monies held by the relevant finance party for the account of Government.

10.4.21 Specified in the Government Guarantee was that the Deed and any non-contractual obligations were to be governed by English law. However, any legal proceedings against either Government or ElectroGas Ltd were to be brought in the courts of England or Malta. Furthermore, Government agreed to waive any right of immunity should BoV, as the facility agent or security trustee, or any finance party initiate legal proceedings against it. Notwithstanding this, Government’s waiver did not extend to particular classes of assets.

10.5 Determination of the Guarantee Fees

10.5.1 In determining the fees that were to be charged by Government to ElectroGas Ltd for the provision of the Government Guarantees, reference was made to the EC regulations applicable in this respect. Specific reference was made to the Commission Notice on the application of Articles 87 and 88 of the Treaty to State aid in the form of guarantees (2008/C 155/02). Among the conditions specified in the Commission Notice is that the guarantee was not to cover more than 80 per cent of the outstanding loan. The EC considered that at least 20 per cent of the financial obligation was to be borne by the lender in order to ensure that the latter had a real incentive to properly assess, secure and minimise the risk associated with the obligation, particularly in terms of the proper assessment of the borrowers’ creditworthiness. However,

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the limitation did not apply when the guarantee was granted to finance a company whose activity solely constituted the provision of an SGEI and the guarantee had been provided by the public authority entrusting the service.

10.5.2 The Notice also stipulated the following conditions, namely that:

- a. the borrower was not in financial difficulty;
- b. the duration of the guarantee could be adequately measured, meaning that the guarantee was to be linked to a specific financial transaction for a fixed maximum amount and limited time; and
- c. a market-oriented price was to be paid for the guarantee, which was to be, at least, as high as the corresponding guarantee premium benchmark on the financial markets.

10.5.3 Where no corresponding guarantee premium benchmark was available, the total financial cost of the guaranteed loan, including the loan's interest rate and guarantee premium were to be compared to the market price of a similar non-guaranteed loan. In this respect, the Notice provided that, in order to determine the corresponding market price, the characteristics of the guarantee and the underlying loan were to be taken into account. These included:

- a. the amount and duration of the transaction;
- b. security given by the borrower and other experience affecting the recovery rate evaluation;
- c. probability of a default by the borrower due to its financial position;
- d. sector of activity and prospects; and
- e. other economic conditions.

10.5.4 Also stipulated was that the classification of the borrower by means of a risk rating was to be provided by an internationally recognised rating agency or, where available, by internal rating employed by the bank providing the underlying loan. In addition, the Notice specified that a guarantee premium set at a single rate, deemed to correspond to an overall industry standard, would not be accepted by the EC. Therefore, in order to assess whether the premium was in line with market prices, Member States could carry out a comparison of prices paid by similarly rated undertakings on the market.

10.5.5 In line with Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, Government was to charge an appropriate premium in order for the guarantees not to be considered as state aid. According to information provided by MFIN, the aggregate guarantee fee charged by Government amounted to €11,338,490, which

comprised fees levied in terms of the €110,000,000 Interim Bridge Facility and the €450,000,000 Bridge Facility, as well as fees charged for extensions to the guarantees in respect of term and amount. The fees charged by Government are presented in Figure 43.

Figure 43: Guarantee fees charged by Government to ElectroGas Ltd

Facility	Period of facility	Facility amount	Guarantee amount	Charge applied	Total fee
		(€)	(€)		(€)
Interim Bridge Loan ¹	19/12/2014 - 03/08/2015	110,000,000	88,000,000	0.50%	277,444
Interim Bridge Loan Extension ¹	28/05/2015 - 03/08/2015	27,500,000	22,000,000	0.50%	20,472
Bridge Loan Facility ¹	28/07/2015 - 31/05/2017	450,000,000	360,000,000	1.27%	8,382,000
Bridge Loan Facility Extension ¹	01/06/2017 - 09/12/2017	450,000,000	360,000,000	1.27%	2,655,518
Total²					11,335,434

Notes:

- 1. The NAO noted that workings for each of the entries varied slightly; however, variances noted were not considered material. Therefore, amounts cited are as reported by MFIN.
- 2. The total differs from that cited in paragraph 10.5.5; however, this difference was not considered material.

10.5.6 In establishing the 0.5 per cent charge that was to be levied by Government in respect of the €110,000,000 Interim Bridge Loan, Government commissioned RSM Malta Consulting Ltd to provide an opinion on the adequacy of the application of this percentage charge. According to the understanding of RSM Malta Consulting Ltd, this margin had been negotiated by Government with ElectroGas Ltd.

10.5.7 Stated in the report prepared by RSM Malta Consulting Ltd was that the transaction under review was unique and there was no readily available comparable project that could be utilised for reference purposes. It was in this context that RSM Malta Consulting Ltd considered two different approaches in determining the suitability of the proposed margin. The first method considered the spread of the interest rate margins applicable in the utilities sector for corporates' credit ratings through reference to Reuters Bonds Online Corporate Bonds Spread and information available about the credit ratings of the shareholders of ElectroGas Ltd. The second method was based on reference to basis points resulting from the incremental cost between the Malta Government Stocks and interbank swap rates plus a premium charge for potential credit default. Both methods indicated that a margin of 50 basis points was reasonable and could be justified to estimate the cost of the Government Guarantee.

10.5.8 Based on the 0.5 per cent rate, Government charged ElectroGas Ltd a fee of approximately €270,000 with respect to the Interim Bridge Loan. The extension of this Loan resulted in an addition charge of €20,000, which was also determined through reference to the 0.5 per cent rate.

10.5.9 With respect to the €450,000,000 Bridge Loan Facility Agreement, Government applied a charge of 1.27 per cent. According to documentation made available by MFIN, this margin was determined through reference to two reports, one compiled by RSM Malta Consulting Ltd and the other by Deloitte & Touche, Ireland.

10.5.10 In arriving at a reasonable margin that was to be charged by Government, RSM Malta Consulting Ltd considered three methods. The first method considered was the spread of the interest rate margins applicable in the utilities sector for corporates' credit ratings through reference to Reuters Bonds Online Corporate Bonds Spread and information available about the credit ratings of the shareholders of ElectroGas Ltd. The second method focused on the corporate spreads of the existing consortium of investors, duly weighted according to their holding in ElectroGas Ltd, to arrive at an all-in weighted average interest rate, which was reduced by the cost of funding in order to determine a weighted average credit spread. The third method considered the credit default swaps for the Government of Azerbaijan and Siemens AG, which are quoted on Bloomberg. Where credit default swaps were not available, as was the case of GEM Holdings Ltd, it was assumed that the credit rating was equivalent to that of the Government of Azerbaijan. For Gasol plc, a speculative credit rating was used to reflect the various uncertainties inherent in its business. Based on these methods, RSM Malta Consulting Ltd concluded that a charge that was more geared towards the lower end of a range between 67 and 133 basis points was reasonable and could be justified to estimate the cost of the Government Guarantee.

10.5.11 The second report, commissioned by the MLAs, to analyse and assess an appropriate pricing range that Government was to be compensated for in exchange for providing the Government Guarantee was that by Deloitte & Touche, Ireland. The NAO was precluded from disclosing the rate proposed by Deloitte & Touche, Ireland, as consent for extracts of its report to be cited was withheld.

10.5.12 These reports provided for a possible range of fees that could be charged by Government to ElectroGas Ltd for the provision of the Government Guarantee. While RSM Malta Consulting Ltd established a fee of between 0.67 and 1.33 per cent, that by Deloitte & Touche was higher. In addition to the creditors' and debtors' perspectives covered by these reports, Government factored in its position as guarantor. According to MFIN, Government sought to eliminate any doubt that the valuation of the rate could be considered to comprise an element of state aid. For this reason, the mid-point of the rate established by Deloitte & Touche was determined as the rate to be charged by Government for the guarantee. Therefore a rate of 1.27 per cent per annum was to be levied for a period of 22 months, which approximately equated to a fee of €8,300,000. The Bridge Loan Facility was extended by a period of seven months until end December 2017, which extension resulted in an additional charge of €2,600,000, based on a similar rate of 1.27 per cent.

10.6 Accession Compensation Agreement

10.6.1 The Accession Compensation Agreement was entered into by Government and ElectroGas Ltd on 27 July 2015. Acknowledged in this Agreement was that the parties had entered into a Bridge Loan Facility Agreement pursuant to which lenders had made available a facility in the principal amount of €450,000,000 to ElectroGas Ltd. In order to secure the repayment of the facility, Government provided a guarantee and undertook to replace ElectroGas Ltd

under the Bridge Loan Facility Agreement in the event of certain circumstances. Under these circumstances, Government would assume, in the capacity of ElectroGas Ltd as borrower, all its rights, obligations and liabilities as per the terms of the Bridge Loan Facility Agreement, simultaneously releasing ElectroGas Ltd of the same rights, liabilities and obligations. It was in this context that the parties agreed to enter into the Accession Compensation Agreement to regulate the effects of the accession.

10.6.2 Stipulated in the Accession Compensation Agreement was that, should accession take place, ElectroGas Ltd was to automatically and immediately become a debtor of Government for an amount equivalent to the obligations assumed by Government to the lenders under the Bridge Loan Facility Agreement on the date of the accession, including any principal, interest and payment of fees and expenses.

10.6.3 The resulting debt between ElectroGas Ltd and Government was to be regulated according to all terms and conditions cited in the Bridge Loan Facility Agreement so that all rights vested in the lenders were to be vested in Government. Moreover, the debt was to be repayable on demand and without the need of further formalities, at the same time when the obligations assumed by Government, for any reason, became repayable.

10.7 Share Call Option Agreement

10.7.1 The Share Call Option Agreement was entered into on 27 July 2015 between Government, as Transferee, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, collectively referred to as the Transferors, and ElectroGas Ltd. By virtue of this Agreement, Government was granted the option to acquire from the Transferors all shares in ElectroGas Ltd, provided that certain circumstances materialise. At the date of the Agreement, the shares in ElectroGas Ltd consisted of 10,000 ordinary shares of one class of €1 each, fully paid up.

10.7.2 The Transferors agreed to transfer the shares to Government, and Government agreed to pay the purchase price in the event that:

- a. Financial Closing did not take place by May 2017, that is, the Final Maturity Date, which Date was subsequently extended to December 2017;
- b. before Financial Closing, a Company Event of Default occurred, considered to have taken place if:
 - i. there was a declaration by the Lenders that the principal and interest due as per the terms of the Bridge Loan Facility Agreement had immediately become payable as a result of an Event of Default as defined in this Agreement, or;
 - ii. there was a breach by ElectroGas Ltd or the Transferors of the restrictions on activities specified in the Share Call Option Agreement, in respect of which no action was taken within 30 days from the Government’s request for a remedy, or;

- iii. the IA was terminated before the Final Effective Date as a result of a Company Event of Default or pursuant to the Pre-Financial Closing Share Transfer Restriction Agreement, or;
 - iv. Financial Closing had not taken place by the Longstop Date, that is, 23 months after the date of the Bridge Loan Closing, which was the date of the first draw down of funds as per the Bridge Loan Facility Agreement, and that:
 - this was not caused by a Force Majeure Event, Relief Event, Financing Material Adverse Change or an act or omission of Enemalta;
 - Enemalta had not withheld approval for ElectroGas Ltd to enter into a consultancy agreement with the independent engineer in terms of the IA;
 - relevant conditions specified in the IA were adequately satisfied or waived prior to Financial Closing;
 - ElectroGas Ltd had entered into Financing Agreements with the Lenders;
 - ElectroGas Ltd had obtained insurance as per the Transaction and Financing Agreements;
 - v. a notice of termination arising from a breach by ElectroGas Ltd was issued by any of the following under their respective agreement, that is, the FSU Owner, Socar Trading SA or an EPC Contractor;
- c. the IA was terminated by Enemalta and any amounts payable by Enemalta to ElectroGas Ltd were settled; or
- d. a Bridge Loan Repayment Event occurred and/or Government was requested to effect any payment under the Government Guarantee.

10.7.3 In addition to the occurrence of any of the aforementioned circumstances, the transfer of shares was also contingent on Government issuing a Share Transfer Notice to the other Parties. Government's right to issue such notice expired on the earlier of Financial Closing or the date when the Share Transfer Formalities had been satisfied.

10.7.4 A week from the issuance of a Share Transfer Notice and on payment of the Purchase Price by Government, the Transferors were to sell all shares in ElectroGas Ltd. On payment of the Purchase Price, ElectroGas Ltd was to be deemed as having discharged its obligation and liability to repay any loans made to it by the Transferors.

10.7.5 The Purchase Price, as defined in the Share Call Option Agreement, was contingent on the circumstances leading to the Share Transfer Event. In circumstances other than a Company Event of Default or in case the IA was terminated by Enemalta, the Purchase Price was to be based on an amount equal to the amounts drawn by the Lenders in line with the letters of credit, but not exceeding 20 per cent of the amount drawn down by ElectroGas Ltd under the Bridge Loan Facility Agreement. From this amount, the aggregate of losses suffered by ElectroGas Ltd or diminution in its value as a result of contractual breaches, the FSU Variations Credit and an amount equivalent to the Performance Guarantee Payments was to be deducted.

- 10.7.6 In the case of a Company Event of Default prior to Financial Closing and the occurrence of a Bridge Loan Repayment Event, and/or a request for Government to effect payment under the Government Guarantee as a result thereof, the Purchase Price would be equal to the amounts drawn by the Lenders in accordance with the Letters of Credit, but not exceeding 20 per cent of the amounts drawn by ElectroGas Ltd under the Bridge Loan Facility Agreement. Of this amount, the aggregate of the following was to be deducted: a Development Allowance of €8,619,160, the loss suffered by ElectroGas Ltd and/or diminution in its value as a result of contractual breaches, the FSU Variations Credit, the Success Fee, being the fees payable to the Transferors and not exceeding an aggregate of €12,500,000, together with the payment of a dividend, as well as an amount equivalent to the Performance Guarantee Payments.
- 10.7.7 Stipulated in the Share Call Option Agreement was that within two days from the Share Transfer Notice, the Transferors were to provide Government with the calculation of the Purchase Price, backing documentation and any other information requested. In the event that Government disagreed with the Purchase Price as indicated by the Transferors, Government retained the option to withhold from the Purchase Price the lower of the amount disputed or €20,000,000, pending resolution of the dispute. This action was not to prejudice Government’s right to recover any amounts paid that were not due. Should the Transferors fail to provide the aforementioned information within the specified timeframe, the Purchase Price was to be determined by Government, acting reasonably and in good faith, without prejudice to the Transferors’ rights to recover any additional amounts due as the Purchase Price.
- 10.7.8 The Transferors were to be deemed to have transferred to Government their shares in ElectroGas Ltd, with the associated terms and conditions, on the Completion Date and on payment of the Purchase Price, payable on this date. Through this transaction, Government was to become the sole party entitled to dividend distributions and any other rights arising from the shares. In addition, the Transferors waived any right of recourse against ElectroGas Ltd and Government for any amounts paid as cash collateral or Standby Letters of Credit as stipulated in the Bridge Loan Facility Agreement. In line with the terms of the Share Call Option Agreement, any tax on capital gains arising from the share transfer was payable by the Transferors, while duty on documents was payable by Government.
- 10.7.9 According to the Agreement, on the Completion Date, standing directors, legal and judicial representatives and the secretary of ElectroGas Ltd were to tender their resignation, and new appointments, to be identified by Government, were to be made prior to the transfer of shares. All Transferors agreed to severally authorise and appoint Government as their attorney to undertake all required to give effect to the transfer of shares, which power was to come into effect and be exercised on and from the Completion Date.
- 10.7.10 At any time prior to a Share Transfer Event, the Transferors had the right to request Government to consider an adjustment to the Purchase Price in respect of modifications intended to improve the project funded by the Transferors. The modifications proposed and the anticipated benefits were to be described in sufficient detail to allow Government to determine whether

to accede to or refuse the request to adjust the Purchase Price. Government retained the right to accept or reject proposals made or initiate further discussions with the Transferors, without any obligation.

10.7.11 Adjustments to the Purchase Price were to be the exclusive remedy of Government for a breach of restrictions on activities prior to Financial Closing. However, various exceptions were specified in the Share Call Option Agreement, in which case Government could seek any remedy available to it. These entailed instances of transfer of shares by the Transferors prior to Financial Closing, the change of control of any of the Transferors and/or amendments to the Articles of Association of ElectroGas Ltd, provided that the parties previously signified consent.

10.7.12 Any dispute in relation to the Purchase Price was not to hinder the transfer of shares to Government but was to be referred to an Expert for resolution. The Agreement outlined the procedure that was to be adhered to in the appointment of an Expert. Any controversy, disagreement or dispute between the parties in the performance, interpretation or application of this Agreement was to be referred to arbitration. Arbitration was to be held and settled in Malta and was to be conducted in line with standing rules of the International Chamber of Commerce. The award of the arbitrators was to be final and binding on the parties.

10.7.13 This Agreement superseded all prior agreements and arrangements, including the Share Call Option Agreement dated 19 December 2014, entered into between the parties and Gasol LNG Import Ltd, extinguishing Government's right to call shares pursuant to the said Agreement. Nothing in the Share Call Option Agreement dated 27 July 2015 was to affect Government's right to acquire shares in ElectroGas Ltd through the Share Transfer Agreement.

10.8 Share Transfer Agreement

10.8.1 The Share Transfer Agreement was entered into on 27 July 2015 between GEM Holdings Ltd, Siemens Project Ventures GmbH, Socar Trading SA, ElectroGas Ltd and Government. For the purposes of this Agreement, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA are collectively referred to as the Transferors.

10.8.2 By virtue of the Share Transfer Agreement, GEM Holdings Ltd was to sell and transfer to Government, which was to purchase and acquire 3,334 ordinary shares in ElectroGas Ltd, each with a nominal value of €1. Similarly, Siemens Project Ventures GmbH and Socar Trading SA were to each sell and transfer to Government, which was to purchase and acquire 3,333 ordinary shares in ElectroGas Ltd, each share with a nominal value of €1. All of the Transferors' shares were fully paid up.

10.8.3 The sale and transfer of the shares was to come into effect on fulfilment of a number of conditions, namely:

- a. the occurrence of an Accession Trigger;

- b. the remittance of the consideration for the nominal price of the shares; and
- c. the submission by Government to the Transferors and ElectroGas Ltd of a Transfer Notice.

The sale and transfer of the shares by the Transferors to Government for a consideration of €10,000 would be effected on fulfilment of all of the above indicated conditions and would denote the date of Completion. Each of the Transferors waived any pre-emption rights in relation to the transfer. On the transfer of shares, Government was to hold the said shares under the same conditions as held by the Transferors.

10.8.4 As at the effective date of transfer, each Transferor warranted that in respect of its own shares each Transferor:

- a. had a good and transferable title to the shares;
- b. was to transfer all issued and allotted share capital of ElectroGas Ltd;
- c. was to transfer the shares free any security, lien or encumbrance; and
- d. there were no other shares in the issued share capital of ElectroGas Ltd other than that held by the Transferors.

10.8.5 Furthermore, each Transferor agreed to, within three business days from receipt of the Transfer Notice, provide to Government all documentation required to effect the share transfer. The documentation, referred to as the Share Transfer Formalities, was to include the resignation of all directors, officers and the secretary of ElectroGas Ltd, the signed share transfer agreements, formal notice of the fulfilment of the conditions cited in paragraph 10.8.3 and the books of account of ElectroGas Ltd. On submission of the documentation, each of the Transferors and Government was to inform BoV, as the facility agent, of the transfer.

10.8.6 During the period of time from an Accession Trigger to three days following the Transfer Notice, BoV could not call on the Acceptable Credit Support²⁷ under the Bridge Loan Facility Agreement, unless this was attributable to an act or omission of a Transferor as per the Bridge Loan Facility Agreement. Specified in the Share Transfer Agreement was that BoV, as the security trustee, could not call on the Acceptable Credit Support from the point of submission of documentation referred to in the preceding paragraph under any circumstance.

10.8.7 Notwithstanding the above, should BoV raise a claim, in good faith, on the Acceptable Credit Support in the belief that the default was the result of an act or omission of a Transferor, and it eventually transpired that this was not, the parties to the Share Transfer Agreement were not to seek to recover from BoV any amounts paid. The parties agreed that should such a

²⁷ Acceptable Credit Support referred to the standby letters of credit procured by the Transferors in favour of BoV, as the Security Trustee, or cash collateral.

situation arise, they were to resolve the dispute between them and effect any payments by way of compensation as may be determined. Moreover, the Transferors waived any right of recourse against Government and ElectroGas Ltd with respect to any claim under the Bridge Loan Facility Agreement satisfied by recourse to the Acceptable Credit Support.

10.8.8 All Transferors agreed to severally authorise and appoint Government as their attorney to:

- a. undertake all that was required to give effect to the Share Transfer Agreement, which power was to come into effect and be exercised on and from the expiry for the submission of documentation; and
- b. exercise all rights attached to the shares, including voting and dividend, and thereby be recognised as holder of the said rights, which power was to come into effect and be exercised on and from Completion (as referred to in paragraph 10.8.3).

10.8.9 The parties agreed that the power of attorney was to expire under the following circumstances:

- a. if an Accession Trigger has not occurred on or prior to the Final Maturity Date (May 2017, later extended to December 2017), that is 22 months from the execution date of the Bridge Loan Facility Agreement (July 2015), then the power of attorney was to expire on the Final Maturity Date; or
- b. if an Accession Trigger has occurred prior to the Final Maturity Date, then the power of attorney was to expire on the date of delivery of the documentation referred to in paragraph 10.8.5.

10.8.10 Between the date of Completion and the date of delivery of documentation, the Transferors were to hold the shares as trustees, with Government as the only beneficiary. Notwithstanding this, nothing in the Share Transfer Agreement was to impinge on Government's right to acquire the shares pursuant to the Call Option Agreement. In addition, the Agreement outlined the procedure and form of notices, governing laws, and stipulated dispute resolution procedures.

10.9 Analysis of the Financing Agreements and the Government Guarantee

10.9.1 Having reviewed the financing agreements entered into by ElectroGas Ltd with various banks and the corresponding government guarantees essential to ElectroGas Ltd in securing financing for the project, the NAO considered the implications that these had on public finances. The NAO is of the opinion that the risk faced by Government in aiding ElectroGas Ltd obtain financing was significant and could have been mitigated or avoided through better planning and project management. Based on the evidence reviewed by this Office, Government/Enemalta considered the possibility of a Government Guarantee and an SSA as early as June 2013 and August 2013, respectively. In this Office's understanding, the SSA and the Government Guarantee were intrinsically connected, as delays in finalising the SSA necessitated the guarantee as a means

for ElectroGas Ltd to obtain financing. The centrality of the SSA in securing financing was due to the fact that project financing was to be on a non-recourse basis, that is, funded through revenue streams that the project itself was to generate. Notwithstanding this, Government referred the SSA for consideration by the EC in terms of conformity with state aid regulations in June 2016. The EC issued a decision on the matter by January 2017, effectively deeming the SSA as conformant with state aid regulations. This matter is delved into in the ensuing chapter.

10.9.2 The NAO sought to establish the reasons for the apparent considerable delay in referring the matter to the EC. In response to queries raised by this Office, the Minister MECW indicated that while discussions were still being held with ElectroGas Ltd regarding the contracts that were to be entered into, it was not possible to refer the matter to the EC as the Commission required an evolved concept of that being proposed. This view was corroborated by the Permanent Secretary MOT, who stated that the informal engagements' process for state aid clearance with the EC had started in mid-2014, as soon as it started to become clear that the project might require state aid clearance in this respect. It was further stated that an iterative process takes place between the Commission and the member state prior to a formal state aid submission. Once this iterative process was concluded, formal notification was submitted in June 2016.

10.9.3 The NAO is of the opinion that the period that elapsed until conclusion of the matter with the EC posed significant risk to Government, more so when one considers the magnitude of Government's exposure. In financial terms this exposure corresponded to the €432,000,000 guarantee; however, a possible default on this guarantee would have triggered cross default in all outstanding Government guarantees, resulting in significant financial implications to Government. Also noted was that the €432,000,000 guarantee represented the maximum permissible exposure to Government when consenting to guaranteeing 80 per cent of the Bridge Facility. It is in this context that the NAO's concerns regarding the risk assumed by Government are to be considered.

10.9.4 The Office sought to establish whether the Government Guarantee was in line with applicable financial regulations. The NAO noted that, at the time under review, no specific legislation regulated the issue and management of government guarantees. This matter is now regulated by the Government Borrowing and Management of Public Debt Act (Act XXII, 2017); however, this was not in force at the time. Instead, direction with respect to government guarantees was provided by the 'Guidelines for the Granting of Government Bank Guarantees' and the 'Manual of Procedures on the Issue, Extension, Cancellation and Compilation of Data on Letters of Guarantee/Letters of Comfort' issued by MFIN in June 2013.

10.9.5 According to the Guidelines, prior to its approval for a bank loan by a government entity, MFIN was to consider the following aspects:

- a. the government (guaranteed) debt in the context of the Maastricht criteria and state aid regulations;

- b. whether the loan was to finance capital programmes required to improve the operations of the entity concerned and to enhance its assets;
- c. whether government was to eventually finance the interest, or the interest and capital, of the loan;
- d. whether such loan was to replace an already existing loan and whether the interest rate of the new loan was the same as, or less, than the interest rate of the loan being replaced;
- e. whether the government guarantee was required in the national interest; and
- f. whether a clear and specific loan repayment schedule was available for the purpose of monitoring, especially when and if a subsequent request for extension was made.

Further stipulated in the Guidelines was that each request was to, in the first instance, be processed by the ministry responsible for the entity requesting the loan and the related government guarantee.

10.9.6 The Manual outlined procedural considerations that were to be followed in matters relating to government guarantees. Of note was that any request from a government entity for the issue of a letter of guarantee or a letter of comfort was to be referred to the SAMB for its comments and recommendations.

10.9.7 Having reviewed the Guidelines applicable at the time of issue of the Government Guarantees to ElectroGas Ltd, the NAO noted that no reference was made to the provision of this form of security to private entities. In fact, the Guidelines solely referred to a scenario where a government entity required financial security, through a government guarantee, to secure a bank loan. The Office confirmed this understanding through the review of guarantees in effect between 2013 and 2017, where Government had an exposure. Immediately evident was that all guarantees issued by Government in this respect, bar that to ElectroGas Ltd, related to entities that were either wholly owned by Government or where Government held a majority shareholding. Although the Office acknowledges that the guarantee was intended to support a project that was in the national interest, in the NAO's understanding, the guarantee provided by Government to ElectroGas Ltd was irregular in terms of the Guidelines applicable at the time, for the Guidelines did not contemplate assistance provided directly to private enterprises by way of security.

10.9.8 With respect to the determination of the guarantee fee, the NAO ascertained that the fee charged by Government to ElectroGas Ltd exceeded €11,000,000. In establishing this fee, Government made reference to a range of applicable rates obtained from multiple professional sources. The Office is of the opinion that the determination of the fee, based on the mid-point of the proposed range, was reasonable.

Chapter 11

European Commission Decision on State Aid for the Delimara Gas and Power Energy Project

11.0.1 A decision on whether the Transaction Agreements and the SSA were compliant with EU state aid rules was issued by the EC on 11 January 2017. The EC approved, under EU state aid rules, Government’s plans to pay ElectroGas Ltd for providing energy to Enemalta. The measure compensated ElectroGas Ltd for the additional cost of fulfilling public service obligations (PSOs). The support was to take the form of payments from Enemalta to ElectroGas Ltd, which were to provide an economic advantage to the Company as they ensured a certain rate of return and a steady revenue stream. The rate of return for ElectroGas Ltd was in line with that of similar projects. On this basis, the EC concluded that ElectroGas Ltd would not be overcompensated for the services that were to be rendered. Hereunder is an account of the EC’s consideration of the case.

11.1 Referral to the European Commission

11.1.1 On 2 October 2014, the Government entrusted Enemalta with the PSO for the provision of a continuous and reliable supply of electricity. In turn, Enemalta delegated part of its PSO to ElectroGas Ltd in line with Article 3(5) of the Enemalta Act (Cap. 272), which provided the then Enemalta Corporation with the authority to grant to any third party the right to perform any functions or operations falling under its responsibility. Thereby, ElectroGas Ltd was entrusted with the SGEI, through the Transaction Agreements, to ensure security of supply.

11.1.2 The EC decision regarding state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI allows Member States to compensate companies entrusted with PSOs for the extra cost of providing the services under certain conditions. On 28 June 2016, following pre-notification contacts, Malta submitted plans relating to the Delimara Gas and Power Energy Plant to the EC for assessment in terms of EU state aid rules.

11.1.3 Following Malta’s notification of a state aid measure, on 13 July 2016 the EC requested additional information, which the Maltese authorities provided on 19 and 27 July 2016. The information made available to the EC indicated that public funding had already been disbursed. Consequently, on 1 July 2016, the EC registered the measure as unlawful aid and the procedural rules laid down in Chapter III of Council Regulation (EU) 2015/1589 – ‘Procedure regarding unlawful aid’ were to apply.

11.2 The European Commission Decision

- 11.2.1 On 11 January 2017, the EC approved support, in the form of payments from Enemalta to ElectroGas Ltd for the Delimara Gas and Power Energy Project. The EC concluded that this support, covering the provision of energy to Enemalta and compensating ElectroGas Ltd for the additional cost in the fulfilment of the PSO, would not give rise to overcompensation for the provision of the services.
- 11.2.2 While indicating that ElectroGas Ltd would benefit from the measure and enjoy an economic advantage in view of a steady revenue stream, ensuring a certain rate of return, it was also acknowledged that ElectroGas Ltd was selected on the basis of a competitive tender and the rate of return was in line with that of similar projects. The expected internal rate of return, estimated by an external consultant to be 7.0 per cent on a pre-tax nominal basis, was, according to the Maltese authorities, below the expected benchmark rate of return.
- 11.2.3 In arriving at its decision, the EC considered the specificities of the Maltese energy market, constrained in the adequate delivery of the necessary level of service by its particularly small and isolated character. In addition, the EC delved into the proposed project, the contractual framework that regulated the purchase of power and gas, the selected beneficiary, that is ElectroGas Ltd, and the selection procedure adopted. Also taken into account were the financing and anticipated return of the project, as well as the competitive context within which it was to operate.
- 11.2.4 In its assessment, the EC considered Article 107(1) of the TFEU, which stipulated that any aid granted by a Member State or through State resources, in any form whatsoever, which distorts or threatens to distort competition and affects trade between Member States, was to be deemed incompatible with the internal market. In this respect, in determining whether state aid was present, the EC assessed whether all of the following criteria were met for the project under review, namely the:
- a. transfer of State resources and imputability;
 - b. economic advantage;
 - c. selectivity; and
 - d. effect on trade and distortion of competition.
- 11.2.5 As a state-controlled undertaking, Enemalta committed to perform various payments under the PPA and the GSA. In addition, through the SSA, the Government committed to take over the rights and obligations assumed by Enemalta pursuant to the IA, PPA and the GSA. Furthermore, the decision to fund the project through a PPA and a GSA was taken by Enemalta, implementing a clearly defined state policy. The Government was also involved through the government

guarantee and the adoption of a new act confirming its consent for the delegation of part of Enemalta's PSO to ElectroGas Ltd. On the basis of these elements, the EC concluded that the measures were provided to ElectroGas Ltd by the State through State resources, in the form of payments from Enemalta and, potentially, Government.

11.2.6 In terms of economic advantage, that is, the second criterion, the EC concluded that the measures provided an economic advantage to ElectroGas Ltd as they ensured a certain IRR and a steady stream of revenue. Regarding the compensation for costs incurred to provide the SGEI, reference was made to the Altmark court judgement²⁸, wherein it was established that the granting of an economic advantage can be excluded if the following cumulative conditions are met:

- a. the recipient undertaking must actually have PSOs to discharge and the obligations must be clearly defined;
- b. the basis of the compensation calculation must be established in advance in an objective and transparent manner;
- c. compensation cannot exceed the costs incurred in the discharge of the PSO, taking into account relevant receipts, and a reasonable profit; and
- d. where the undertaking discharging the PSO is not selected through a public procurement procedure, on the basis of being the most economically advantageous for the community, compensation due shall be based on an analysis of the costs which would have been incurred by a typical, well-run undertaking to provide the public service requirements, taking into account relevant receipts and a reasonable profit.

11.2.7 In its decision, the EC considered that the outcome of the tender was influenced by the SSA, which was added to the contractual structure during the tender procedure, and therefore, it could not be guaranteed that the selected bid represented the least cost to the community. Furthermore, the Maltese authorities failed to provide information showing that the compensation was set on the basis of the costs of a typical, well-run undertaking. In view of these considerations, the EC concluded that while elements of the first three conditions may have been met, the fourth condition did not appear to have been observed. Therefore, the measures were deemed to have conferred on ElectroGas Ltd a competitive advantage in terms of Article 107(1) TFEU.

11.2.8 The third criterion related to the selectivity of the measure. According to the EC, the public financing was deemed selective given that it was granted specifically to ElectroGas Ltd in terms of the Transaction Agreements.

²⁸ Judgement of the Court of Justice of 24 July 2003, Altmark Trans, C-280/00, ECLI:EU:C:2003:415, paragraph 87 to 95.

11.2.9 In terms of the fourth criterion, since gas and oil products are subject to trade between Malta and other Member States, and electricity will similarly be subject to such trade, the measures are likely to impact on the patterns of trade between Member States. Furthermore, the project competes with generation from renewable sources of energy and the interconnector. Consequently, the EC concluded that the measures distorted or threatened to distort competition and were likely to affect trade between Member States.

11.2.10 Based on the assessment of these criteria, the EC concluded that the measures constituted state aid within the meaning of Article 107(1) TFEU. Moreover, on this basis, the EC concluded that the measures were granted to ElectroGas Ltd in breach of the notification and stand-still obligations laid down in Article 108(3) TFEU. In this context, the measures granted to ElectroGas Ltd were considered by the EC as constituting unlawful State aid.

11.2.11 Notwithstanding this, point 11 of the 2012 SGEI Framework states that, "... State aid falling outside the scope of Decision 2012/21/EU may be declared compatible with Article 106(2) of the Treaty if it is necessary for the operation of the SGEI concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union." However, the 2012 SGEI Framework stipulates the conditions that are to be met to achieve balance in this respect. These conditions are addressed hereunder.

Genuine Service of General Economic Interest as referred to in Article 106 of the Treaty

11.2.12 The EC acknowledged that, while Member States have a wide margin of discretion regarding the nature of services that could be classified as SGEI, where specific Union rules exist, the respective Member State's discretion is bound by those rules and any breaches would render the measures incompatible with Article 106(2) of the Treaty. In the case of the Delimara Gas and Power Energy Plant, the Electricity Directive applies.

11.2.13 The EC decided that the PSO fulfils the requirements of Article 3(2) of the Electricity Directive on the basis that:

- a. the general economic interest is justified as it aims to ensure security of supply, which is specifically recognised as a legitimate objective for imposing PSOs in the Electricity Directive;
- b. the project was found to be the best available option in the Maltese context to ensure security of supply; and
- c. it was clearly defined, transparent, non-discriminatory and verifiable.

11.2.14 Further noted by the EC was that Article 3(6) of the Electricity Directive was also complied with since the compensation was granted to ElectroGas Ltd following an open and non-discriminatory public procurement procedure. With respect to the security of supply, the EC noted that, in

general, the provision or increase of normal capacity generation could not be considered as an SGEI, as the objective could be achieved by different means. On the other hand, in small systems, where a single unit provides a large proportion of the total capacity, local intervention was more likely to be required to ensure that the N-1 criterion was respected.

11.2.15 Also highlighted by the EC were the specificities of Malta’s small and isolated electricity system, with its particular characteristics, which make it distinct from other Member States, affecting the desired level of service. These special characteristics are also recognised in EU law by means of automatic derogations from Articles 9 (unbundling of transmission systems and transmission system operators), 26 (unbundling of distribution system operators), 32 (third-party access) and 33 (market opening and reciprocity) of the Electricity Directive. The following elements were also taken into account by the EC:

- a. diversification of the electricity generation and sources of fuel used;
- b. the reduction in emissions;
- c. the increased capacity required to meet the N-1 criterion; and
- d. costs for the creation of interconnection infrastructure.

11.2.16 In view of the above, the EC concluded that the project would provide an adequate level of security of supply by re-establishing compliance with the N-1 criterion, catering for Malta’s specific circumstances. The 2012 SGEI Framework also required Member States to indicate that they had taken into account the interests of users and providers through public consultations or other appropriate instruments. In this respect, the EC recognised that since 2006, Enemalta has explored various options of electricity generation and interconnection through public consultations and with the assistance of external consultants. Subject to these considerations, the EC concluded that the PSO satisfied the applicable criteria and constituted a recognised genuine SGEI as defined in Article 106 TFEU.

Need for an Entrustment Act and Duration of the Period of Entrustment

11.2.17 The 2012 SGEI Framework stipulated that the official acts through which the respective undertaking would have been entrusted with the operation of the SGEI were to specify the:

- a. precise nature of the PSO and its duration;
- b. undertakings and territory concerned;
- c. nature of any exclusive rights assigned to the undertakings concerned;

- d. parameters for calculating, controlling and reviewing the compensation; and
- e. arrangements for avoiding and repaying any overcompensation.

11.2.18 The EC agreed that the Transaction Agreements, which constituted the entrusting acts, satisfied all the requirements, in that they clearly defined the nature of ElectroGas Ltd's PSO and designated ElectroGas Ltd as the holder of these obligations. The Transaction Agreements also established that the territory covered by the said obligations was limited to the Maltese Islands and that no exclusive rights were granted to ElectroGas Ltd. Also set out was how the price of the PPA and GSA was determined and, given that this was equal to the compensation, in view of the fact that Delimara 4 and the Gas Facilities were entirely dedicated for the attainment of the PSO, the Agreements were deemed to satisfy the requirement regarding the calculation of compensation. Finally, the Agreements also included arrangements to avoid overcompensation by providing the formulae for the calculation of all revenues that ElectroGas Ltd was entitled to. As a result, the EC concluded that the entrustment acts satisfied the requirements of the 2012 SGEI Framework.

11.2.19 The 2012 SGEI Framework also stipulated that the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets employed in the provision of the SGEI. The EC considered the period of entrustment for the project under review as justified, since the 18-year duration of the entrustment period was shorter than the operating life of the CCGT plant, which could range between 25 and 35 years.

Compliance with Directive 2006/111/EC

11.2.20 Article 2(d) of Directive 2006/111/EC requires undertakings to maintain separate accounts where, in addition to other activities, they operate an SGEI compensated through public funds. Given that ElectroGas Ltd would not be carrying out any commercial activity other than the fulfilment of the PSO, this requirement did not apply. Furthermore, the Maltese authorities committed to retain all relevant financial information for five years and provide it to the EC on request, while publishing the relevant information as per EU regulations. Consequently, the aid was deemed compatible with the internal market, satisfying the requirements on the transparency of financial relations between Member States and public undertakings, as well as on financial transparency within certain undertakings.

Public Procurement Requirements

11.2.21 While Enemalta was considered as a contracting entity as per the provisions of the Procurement Directive 2004/17/EC, in force at the time of the launching of the competitive procedure for the award of the Transaction Agreements, the IA, PPA and GSA were all deemed to fall outside its scope as per Articles 1(3) and 26(b). The EC decided that the publication in the Official Journal of the EU, the competitive procedure, and subsequent response by 18 bidders satisfied the

general principles of the TFEU. Therefore, the EC concluded that the requirements of the 2012 SGEI Framework were fulfilled.

Absence of Discrimination

11.2.22 Point 20 of the 2012 SGEI Framework provides that where more than one undertaking is involved in the provision of the same SGEI, the compensation calculation should be the same for each undertaking. Since the SGEI under review was exclusively assigned to ElectroGas Ltd, the EC concluded that there could be no discrimination.

Amount of Compensation

11.2.23 Cited in point 21 of the 2012 SGEI Framework is that “... the amount of the compensation must not exceed what is necessary to cover the cost of discharging the PSOs, including a reasonable profit”. Further stipulated is that the net costs should be determined using the net avoided cost methodology, where possible, or using alternative methods such as the cost allocation methodology. The former is based on the difference between the net cost for the service provider with and without the SGEI obligation.

11.2.24 The EC decided that, in this case, the net avoided cost method was not appropriate for the project under review since ElectroGas Ltd’s activity and facilities were completely dedicated to the SGEI, and there was no counterfactual scenario wherein ElectroGas Ltd would have undertaken the project without an SGEI obligation.

11.2.25 Under the cost allocation method, the maximum amount of compensation was not to exceed the difference between revenues earned from the fulfilment of the SGEI obligation and the respective costs, including a reasonable profit. Given that in Malta there is no energy market in which ElectroGas Ltd can sell at market prices, revenues were fixed through the PPA, and thereby the compensation received was equal to the purchase price. Therefore, the 2012 SGEI Framework’s provision that the compensation was not to exceed the net costs related to the provision of the SGEI would be satisfied as long as the project’s return did not exceed a suitable benchmark rate of return.

11.2.26 The EC noted that the expected returns reflected the terms of the Transaction Agreements, including the delivery and availability charges payable to ElectroGas Ltd under the PPA and GSA. Since the payments under the Transactions Agreements constituted the revenue earned by ElectroGas Ltd for the SGEI, this satisfied the criterion that at least all the revenue earned from the SGEI was to be taken into account. The EC further considered the fact that since ElectroGas Ltd could only sell electricity to Enemalta when nominated, and revenue was calculated through set formulas, no windfall profits appeared possible.

11.2.27 Reasonable profit, as referred to in the 2012 SGEI Framework, constituted the rate of return required by a typical company when considering whether or not to provide the SGEI for the

Chapter 11

duration of the entrustment act, taking into account the level of risk. According to the EC, in the case under review, ElectroGas Ltd was selected following a competitive process, thereby ensuring that the aid element was proportionate and kept to a minimum. The EC further noted that the project's expected yield of 7 per cent was in line with accepted rates for similar cases, and below expected benchmarks, while the risk of cost increases was borne by ElectroGas Ltd.

11.2.28 Point 39 of the 2012 SGEI Framework provides that Member States must incorporate incentives for the efficient provision of the SGEI at high standard when designing the compensation method. In this case, the fixed compensation was based on a fixed heat rate, adequately incorporating efficiency gains that ElectroGas Ltd could make through a more efficient heat rate from Delimara 4 over the entrustment period. Point 44 of the Framework was deemed inapplicable in view of the fact that ElectroGas Ltd provided just one SGEI and did not carry any activities beyond its scope.

11.2.29 The EC concluded that the measures did not lead to overcompensation since, ex ante, the maximum level of profit to which ElectroGas Ltd was entitled appeared reasonable.

Additional Requirements necessary in Ensuring that the Development of Trade is not Affected Contrary to the Interests of the Union

11.2.30 Highlighted by the EC was that Malta conducted extensive studies to determine the best solution, while the authorities explained that Delimara 4 would not displace more economic generation sources. Therefore, the EC concluded that no serious internal market competition distortions remained unaddressed and the aid could not affect trade in a way contrary to the interests of the Union. Furthermore, market functioning would not be negatively impacted since Malta would be accepting imports whenever these were cheaper than the marginal cost of local generation, thereby avoiding any detrimental effect on the Italian market or any other market with which Malta may be connected in the future.

Transparency

11.2.31 The Maltese authorities consented to publish, on a publicly accessible website, the result of the public consultation, content and duration of the PSO, undertakings and territory concerned, as well as the amounts granted to ElectroGas Ltd on a yearly basis, satisfying the requirements of point 60 of the 2012 SGEI Framework.

Conclusion

11.2.32 While the EC expressed regret over the fact that Malta applied the aid in question in breach of Article 108(3) of the TFEU, no objections were raised on the basis that the aid was in line with the internal market provisions stipulated in Article 106(2) of the TFEU.

11.3 Observations regarding the European Commission Decision

- 11.3.1 The NAO does not have any differing comments with regard to the decision by the EC that the contracts awarded to Electrogas Ltd do not, in fact, constitute unlawful state aid; however, certain points raised by the EC bear particular relevance to issues identified in this review. In its decision, the EC deemed that the SSA, included in the contractual structure during the tender procedure, had a bearing on the outcome of the tender. Of particular concern was that this late inclusion could have distorted the tendering process, and therefore, it could not be assured that the selected bid represented the least cost to consumers. The possible distortion of the tendering process through the late inclusion of the SSA is a matter discussed in greater detail in chapter 3 of this report.
- 11.3.2 The NAO acknowledges reference made to the issue of security of supply, particularly in view of the distinct characteristics of the Maltese power infrastructure, typical of small systems, where a single unit provides a significant proportion of overall capacity. Under such circumstances, the EC noted that local intervention was more likely necessary in achieving adherence to the N-1 criterion. In this context, the project contributed towards security of supply.
- 11.3.3 The EC made reference to the fact that the project would compete with other sources of power, namely, renewable energy sources and the interconnector. According to the EC, the project potentially distorted competition and was likely to affect trade between Member States. Nonetheless, based on explanations provided and studies carried out by the Maltese authorities, the EC concluded that market functioning would not be adversely impacted since Malta would accept imported energy whenever this was more economical than the cost incurred with respect to local generation. This matter is addressed in more detail in section 13.4 of this report.

Chapter 12

Financial Closing

12.0.1 Following clearance by the EC that the SSA did not constitute state aid, it was possible for the parties to conclude the financing of the project through financial closing. Central in this respect was the Conversion Term Agreement, which was to regulate the contractual relationship between Enemalta and ElectroGas Ltd once the planned gas pipeline with Sicily was operational. This scenario was to be triggered through a GSA Exit. Finalisation of the Conversion Term Agreement allowed Government, Enemalta and ElectroGas Ltd to enter into the SSA. Through the SSA, ElectroGas Ltd agreed that, should any circumstance materialise which could potentially lead to the termination of the Supply Agreements, then Government would be able to ensure continuity of security of an uninterrupted supply of electrical power under the same terms and conditions of the Supply Agreements.

12.0.2 Finalisation of the Conversion Term Agreement and the SSA, as well as the resolution of a number of minor outstanding issues, allowed for settlement of the €450,000,000 Bridge Loan Facility by ElectroGas Ltd, as long-term financing was secured. In turn, this resulted in the release of Government from obligations emanating from the Government Guarantee.

12.1 Conversion Term Agreement

12.1.1 Enemalta and ElectroGas Ltd entered into the Conversion Term Agreement on 30 November 2017. This Agreement amended and restated the IA and amended the PPA, the GSA, and the Site Services Agreement. The IA had stipulated that the Conversion Term Agreement was to address the obligations and liabilities of Enemalta and ElectroGas Ltd in respect of the delivery by Enemalta and/or the taking by ElectroGas Ltd of gas and/or LNG for the operation, maintenance, testing and making available the facilities by ElectroGas Ltd. Furthermore, the Conversion Term Agreement was to comprise any other conditions agreed to by Enemalta and ElectroGas Ltd.

Changes to the Implementation Agreement

12.1.2 The amended and restated IA listed the dates of a number of key targets of the project. It was acknowledged that the Early Gas Commencement Date and the LNG Supply Term Commencement Date had occurred on 14 August 2016 and 14 April 2017, respectively, and that the expiry of the Fixed Price LNG Supply Term would occur on 13 April 2022, unless the termination date occurred before that date. The Indexed Price LNG Supply Term was to start on 14 April 2022 and end on 13 August 2026, that is, nine years and four months after the LNG

Supply Term Commencement Date, unless ending prior on the termination date or on the GSA exit date.

Final Effective Date Conditions

- 12.1.3 The original IA had included a number of conditions that Enemalta and ElectroGas Ltd had to satisfy or waive by the Final Effective Date. In the amended IA, the condition regarding entry into the Conversion Term Agreement was removed.
- 12.1.4 Furthermore, the amended IA listed a new circumstance wherein after the Final Effective Date, the shareholders (amended in this case to reflect the exit of Gasol (Malta) Ltd from ElectroGas Ltd) could transfer their ordinary share capital. This circumstance allowed for the shareholders to hold the relevant percentage shareholding in ElectroGas Ltd through a holding company owned by GEM Holdings Ltd (33.334 per cent), Siemens Project Ventures GmbH (33.333 per cent) and Socar Trading SA (33.333 per cent).

Government Deed: Lease of the Jetty Area

- 12.1.5 Noted in the amended IA was that aside from Enemalta leasing part of the Delimara site to ElectroGas Ltd pursuant to the Site Lease Deed, the Government granted ElectroGas Ltd the jetty area on an emphyteusis pursuant to the Government Deed. The amended IA included references to the Government Deed as forming part of the Transaction Agreements and the Government Deed Direct Agreement as forming part of the Direct Agreements. Furthermore, aside from providing access to the leased premises, ElectroGas Ltd was to grant Enemalta access to the jetty area to observe progress made with respect to the construction of the facilities and to undertake any audit, investigation or inspection to verify that the conditions of the Transaction Agreements were complied with.
- 12.1.6 On payment of the GSA Exit Value, ElectroGas Ltd was to, aside from transferring the gas facilities and handing over the sites leased through the Site Lease Deed to Enemalta, assign the jetty area to Enemalta to the extent permitted by the Government Deed. Similarly, on termination of the Site Lease Deed, ElectroGas Ltd was to assign the jetty area to Enemalta as regulated in the Government Deed.

Planning, Dispatch, Stocks and LNG Supply

- 12.1.7 The amended IA clarified that the yearly annual delivery plan to be provided by ElectroGas Ltd on or before 9 September, the three-month ahead forecast to be provided by Enemalta, and the specific delivery schedule to be provided by ElectroGas Ltd, were to be submitted during the LNG Supply Term. The amended IA also included a new forecast that ElectroGas Ltd was to submit to Enemalta. During the LNG Supply Term, on and from 14 April 2018, within fifteen days from receiving the annual forecast, ElectroGas Ltd was to provide Enemalta with a non-binding annual forecast of demand for LNG necessary to meet the requirements of the

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annual forecast and such amounts needed by ElectroGas Ltd to operate, maintain and test the facilities in accordance with the Transaction Agreements, including predicted flaring and LNG stock required as heel, for every month of the whole or part gas year relating to the annual forecast.

12.1.8 Furthermore, with respect to the economic dispatch of Delimara 4 and the planned utilisation of the gas facilities, the consideration of the actual contract stock and the contract stock requirement was only to relate to the LNG Supply Term. In this respect, the amended IA did not include the Energy and Gas Conversion Term. Reference to the Energy and Gas Conversion Term was also removed for the period in which ElectroGas Ltd would be liable to pay Enemalta an additional energy cost for each hour if there was no actual contract stock following the Gas Availability Payment Commencement Date. This requirement was limited to the LNG Supply Term.

Extended LNG Supply Term

12.1.9 The amended IA elaborated on a potential Extended LNG Supply Term as part of the LNG Supply Term. If such an extension came into effect, it was to begin on the day following the expiry of the Indexed Price LNG Supply Term, and end on the earlier of the termination date, the GSA exit date, or on the end of the most recently agreed period by the parties in line with the Agreement. Otherwise, the provisions of the Indexed Price LNG Supply Term were to apply during the extension. Furthermore, the guarantee in respect of the LNG SPA was to be extended to also cover the extended period.

12.1.10 The amended IA stipulated the procedure to extend the LNG supply term. Enemalta could request an extension of 12 months or more by providing written notice to ElectroGas Ltd at least 15 months prior to the LNG Supply Term Expiration Date. Multiple requests for extension could be made by Enemalta. Within two months of receipt of Enemalta's request, ElectroGas Ltd was to submit a written offer to Enemalta for a gas commodity price for the extended period, provided that ElectroGas Ltd had obtained an offer of an equivalent commodity price from Socar Trading SA for the supply of LNG during this period. The gas commodity price offered by ElectroGas Ltd was to be in €/mmBTU and in line with the provisions of the IA, bar the commodity multiplier, which was to be offered by Socar Trading SA to ElectroGas Ltd. On acceptance by Enemalta, the extended term was conditional on:

- a. Socar Trading SA having previously entered into a long-term LNG SPA with an approved LNG Supplier (at the time of the signing of the Conversion Term Agreement, these were BP plc, Royal Dutch Shell plc, Total SA, Gas Natural SDG SA, and their respective affiliates, yet provisions existed for this list to be updated) on a delivered ex ship²⁹ or delivered at

²⁹ When supply is made on a delivered ex ship basis, the seller's obligation ends when the goods are delivered by the seller to the agreed port, aboard the ship, and not cleared for import. In this case, the buyer is responsible for all costs incurred in receiving and unloading of the goods.

³⁰ When supply is made on a delivered at place basis, the seller agrees to pay all costs and suffer any potential losses of moving goods sold to a specific location.

place³⁰ to Malta basis with respect to the extended term on a back-to-back basis, or more favourable conditions to the buyer in comparison with the LNG SPA; and

- b. the cost of 80,000m³ of LNG at the gas commodity price offered to Enemalta not being greater than €35,000,000, calculated on the date of the offer submitted by ElectroGas Ltd.

12.1.11 It was also noted that Enemalta and ElectroGas Ltd were to, at the request of either, during a six-month period commencing on 13 April 2024, initiate negotiations for an extension, as well as the volume and gas commodity price for the period to be extended. Furthermore, ElectroGas Ltd could, at any time prior to the LNG Supply Term Expiration Date, offer Enemalta a commodity price and terms alternative to those provided in the IA for an extension to the LNG Supply Term. Enemalta could request ElectroGas Ltd to submit such an offer at any time before the LNG Supply Term Expiration Date. In either case, ElectroGas Ltd and Enemalta were to seek to reach agreement on extending the LNG Supply Term.

12.1.12 If the Extended LNG Supply Term Effective Date occurred based on an offer accepted by Enemalta, then from one month prior to the preceding LNG supply term expiration date to one month before the revised LNG supply term expiration date, then the Delivered Value in €/mmBTU was to be calculated in line with the same formula utilised in respect of the period prior to the fixed price period and the indexed price LNG supply term, that is:

$$DV_M = DQ_M * \alpha * BR_{Y,M-1} * EXR$$

Where:

- DV_M is the Delivered Value of LNG in calendar month M in euro;
- DQ_M is the Delivered Quantity of LNG in calendar month M;
- α is the commodity multiplier, as offered by Socar Trading SA to ElectroGas Ltd;
- $BR_{Y,M-1}$ is Brent; and
- EXR is the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

Amendments in relation to the FSU

12.1.13 The amended IA introduced a Guaranteed FSU Capacity Availability, with the FSU being required to send out LNG at 150m³/hour. The FSU could be considered unavailable for various reasons, including, among others, because of an FSU capacity availability less than 85 per cent of the guaranteed availability, or Enemalta being incapable of berthing an LNG vessel at the FSU twelve hours after a notice of readiness had been provided by the LNG vessel, due to the negligence of ElectroGas Ltd or because ElectroGas Ltd had committed a breach of the IA.

12.1.14 Furthermore, the amended IA altered provisions relating to force majeure and the FSU. Specifically, a natural force majeure event damaging or destroying the FSU was not to be deemed an event of loss. Furthermore, an FSU Force Majeure Event was included as a new

concept in the Agreement. The FSU Force Majeure Event could arise in a number of situations, including the closure of facilities affecting the sea area and the unavailability of the FSU due to adverse weather. Provisions in respect of an FSU Natural Force Majeure Event were also included in the amended IA. It was noted that if the FSU was damaged or destroyed because of a Natural Force Majeure Event rendering it unfit for normal operation in line with the Supply Agreements, ElectroGas Ltd was to recommence gas and energy deliveries to Enemalta on a regular basis within a recovery period. ElectroGas Ltd was not obligated to comply with this requirement if a GSA Exit Date occurred or in the case of an event of loss. In addition, ElectroGas Ltd bore no obligation to comply if, one month after the date of agreement or determination of a remedial programme, remedial works and budget had elapsed without Enemalta serving a termination notice to ElectroGas Ltd and the latter having given Enemalta one week's advance notice of such. The recovery periods were defined as nine months from the date of damage or destruction of the FSU and 12 months if there had been damage to the gas facilities aside from damage to the FSU due to the Natural Force Majeure Event or if access to the gas facilities was obstructed by the damaged FSU.

12.1.15 A new schedule relating to the FSU conditions of use was included. These conditions were defined as the operational requirements of ElectroGas Ltd, determined in line with market practice and standards, for the berthing of LNG ships in effect at the gas facilities periodically. The conditions of use were to be compulsory for the owner of the ship, ElectroGas Ltd and Bumi Armada and outlined, among others, the responsibilities of the master and the owner of the LNG carrier, as well as other safety matters.

Conversion Term

12.1.16 A number of changes in the amended IA, identified by comparison to the previous IA related to the Conversion Term. These included that:

- a. the Conversion Term was no longer deemed as a supply reference period;
- b. the non-binding annual forecast to be submitted every year by Enemalta to ElectroGas Ltd, outlining the quantities of energy and gas that Enemalta would dispatch and nominate from Delimara 4 and the gas facilities during each month, was to be submitted by 23 May before the commencement of each gas year entirely or partly in the Conversion Term. The previous version of the IA required this to be submitted by 23 June prior to each whole or part gas year;
- c. the demand forecast that ElectroGas Ltd was to provide Enemalta for LNG and/or the gas required to meet the annual forecast received by Enemalta and also quantities necessary to operate, maintain and test the facilities was to be sent 15 days subsequent to the non-binding annual forecast received by Enemalta and was also to be non-binding. It was noted that such forecast was to consider the amounts required to make the facilities available;

- d. any breach by Enemalta of its supply obligations under the conditions relating to the Conversion Term LNG and gas supply were not to give rise to any liability of Enemalta, except as outlined in the Supply Agreements;
- e. ElectroGas Ltd was not to be liable to Enemalta for failing to accept delivery of LNG or gas, without prejudice to any liability of ElectroGas Ltd to pay the Conversion Term Credit, including, as the case could be, the:
 - i. Delimara 4 Gas Credit - payable by ElectroGas Ltd to Enemalta if a gas turbine generator outage occurred during the Conversion Term. It was to amount to €750 per hour per gas turbine generator throughout the gas turbine generator outage. No Delimara 4 Gas Credit was to be payable in any month until Delimara 4 had been affected by gas turbine generator outage(s) in respect of at least one gas turbine generator for a total of 96 hours in such month. If multiple generators experienced an outage concurrently, this was to count as one outage for the purpose of such aggregate. Accordingly, if in any one month, three gas turbine generators suffered an outage simultaneously for 360 hours, a Delimara Gas Credit of €594,000 was payable. The Delimara 4 Gas Credit was to be restricted to a maximum amount of €1,500,000 during each year in the Conversion Term, pro-rated for part years. This credit was not payable in particular circumstances outlined in the IA;
 - ii. Gas Facilities Gas Credit - payable by ElectroGas Ltd to Enemalta when the gas availability was below 90 per cent of the gas facilities phase 2 acceptance tests availability during the Energy and Gas Conversion Term. This credit was to amount to €18,000 per whole day or part day. The first five whole days or part days of the summation of all such period(s) in any month were not to be included. The Gas Facilities Gas Credit was to be capped at a maximum amount of €1,200,000 during each year in the Energy and Gas Conversion Term, pro-rated for part years. Furthermore, it was not payable with respect to an Enemalta Risk Event, an Uninsurable Risk Event, a Relief Event or any decline in the ability of the FSU to send out LNG to the gas facilities; and/or
 - iii. FSU Unavailability Event - payable by ElectroGas Ltd to Enemalta where, during any period in the Energy and Gas Conversion Term, the FSU was unavailable. The amount payable amounted to \$15,000 per whole day or part day. The first five whole days or part days of the aggregate of all such period(s) in any month were not to be included. It was not payable in respect of a Natural Force Majeure Event affecting the FSU, a Relief Event, an Enemalta Risk Event, an Uninsurable Risk Event or an FSU Force Majeure Event. The FSU Unavailability Credit was to be capped at a maximum of \$1,500,000 during each year in the Energy and Gas Conversion Term;
- f. the previous version of the IA had outlined the amounts of LNG and/or gas to be delivered by Enemalta during such period were to be established in line with the supply forecast submitted by ElectroGas Ltd and the Conversion Term Agreement. The Conversion Term Agreement added that on and from the date when the first gas deliveries to the gas receiving connection point had commenced, Enemalta was to, in connection with any dispatch instruction or nomination of gas to be supplied to Delimara 3, denote whether ElectroGas

Ltd should use gas and/or LNG and in what combination, provided that Enemalta was to procure that LNG delivered to ElectroGas Ltd was used within two months of delivery, failing which Enemalta was to repay ElectroGas Ltd within ten days the cost of the LNG that was not utilised (save for LNG required as heel), at the price ElectroGas Ltd had paid for such LNG. Such reimbursements were to be offset against Energy Delivery Payments and Gas Delivery Payments due to ElectroGas Ltd in respect of net electrical output and gas delivered to Enemalta to the extent Enemalta had specified that ElectroGas Ltd ought to utilise LNG;

- g. new provisions relating to LNG transportation during the Energy and Gas Conversion Term, listing Enemalta's responsibilities, such as the transportation of all LNG to be delivered at the LNG Connection Point, working LNG vessels as well as requirements relating to their berthing, port approvals, marine permits, the notification to ElectroGas Ltd of the estimated time of arrival of an LNG vessel and any operational deficiency of such vessel, and ascertaining that LNG made available by Enemalta to ElectroGas Ltd did not originate from a sanctioned country. Also listed were the responsibilities to be borne by ElectroGas Ltd, such as certain requirements relating to the FSU's operation and maintenance and requirements in relation to the modification of the gas facilities. Furthermore, the transfer of LNG from the LNG vessel to the FSU was also regulated;
- h. ElectroGas Ltd was only to procure gas and LNG for the operation of Delimara 4 from Enemalta;
- i. unlike the previous version of the IA, the amended IA did not provide for LNG sales to be carried out by ElectroGas Ltd in relation to any ElectroGas Ltd Take or Pay Deficiency during the Conversion Term; and
- j. Enemalta was to charge ElectroGas Ltd for the delivery of metered gas and LNG at the price at which Enemalta or its nominee had bought the relevant stock from a third party supplier for supply to ElectroGas Ltd. The price was to be an arm's length price in €/mmBTU. Enemalta was to submit to ElectroGas Ltd copies of the LNG and gas supply contracts evidencing such price.

12.1.17 Two calculations applicable during the Conversion Term were amended in the restated IA. The changes essentially involved expressing the actual gas price per unit of LNG in €/mmBTU as opposed to \$/mmBTU and consequently removing the exchange rate from the calculations. Furthermore, the calculation for the Delivered Value during the energy and gas conversion term was amended to apply as from 13 July 2026, that is, one month before the LNG Supply Term Expiration Date, as opposed to 14 March 2027, that is, 143 months after the Schedule Start Date. The formula in this respect was revised to:

$$DV_M = DQ_M * AGP$$

Where AGP signified the actual gas price per unit of LNG expressed as €/mmBTU, rather than \$/mmBTU.

12.1.18 Furthermore, the effective commodity price for gas in respect of gas supplies by Enemalta to ElectroGas Ltd was amended to apply also during the Energy and Gas Conversion Term, whereas in the previous IA only the Energy Conversion Term had been cited. The formula was revised to:

$$GASP_M = AGP/mmBTU$$

Payment Terms and Charges

12.1.19 Clarified in the amended IA was the fact that ElectroGas Ltd was to submit the reconciliation statement referred to in paragraph 6.3.74 of this report after the end of each calendar month subsequent to each Supply Reference Period. Reference to the LNG Supply Term Expiration Date in this respect and the ElectroGas Take or Pay Deficiency was removed in the amended IA. Therefore, the following information was to be included in the reconciliation statement for the immediately preceding Supply Reference Period:

- a. the Enemalta Contract Quantity for the relevant Supply Reference Period;
- b. the Enemalta Take or Pay Quantity and any reductions therefrom;
- c. the Enemalta Take or Pay Deficiency, as well as the balance of previously accrued deficiencies;
- d. the quantity of gas, Enemalta Make up Gas and the gross calorific value thereof;
- e. the net electrical output delivered by ElectroGas Ltd to Enemalta;
- f. the gas price applicable;
- g. details of any payments made;
- h. volumes of LNG delivered to the FSU; and
- i. invoices received from LNG suppliers and any amounts paid by ElectroGas Ltd.

12.1.20 Aside from the Conversion Term Credit, a number of other charges were introduced in the amended IA. These included:

- a. trip credits - payable by ElectroGas Ltd for every PPA contract year as from two days after the Energy Delivery Date. This payment was to be calculated as the multiplication of the number of trips during a PPA contract year starting after two years from the Energy Delivery Date and the trip credit rate. The trip credit rate was to be zero in respect of the first 24 trips of any gas turbine generator of Delimara 4 in a PPA contract year, and €10,000

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for every trip from the twenty-fifth trip of any gas turbine generator of Delimara 4. If the first PPA contract year after two years subsequent to the Energy Delivery Date or the final contract year is not for a 12-month period, the allowance of 24 trips was to be pro-rated.

- b. delay liquidated damages interest - this was to accrue daily and be compounded annually on and from the Energy Delivery Date at two per cent until the GSA Exit Date (or the termination date if earlier), and 2.5 per cent on and from the GSA Exit Date until the termination date, and was to be due and payable on or after ten years after the Energy Delivery Date. Delay liquidated damages interest was to be discharged by ElectroGas Ltd through the payment of the interest and the settlement of the delay liquidated damages on the termination date.
- c. back-fed gas - ElectroGas Ltd was to pay Enemalta for gas taken by it downstream of the fiscal metering system at the gas price.
- d. heat rate credit – Enemalta was entitled to receive from ElectroGas Ltd the Enemalta heat rate credit in respect of the period of each heat rate credit reconciliation to be delivered. The ElectroGas Ltd heat rate credit was to be due and payable on the termination date. Within 30 days of the end of each gas year, commencing on or after 1 October 2017, the LNG supply term expiration date, the GSA exit date, the termination date, the date of any transfer of LNG to Enemalta in line with the IA and at the end of each gas quarter commencing on or after the termination date, ElectroGas Ltd was to submit to Enemalta a calculation of the heat rate credit due to Enemalta, and/or, as the case may be on or after the termination date, the ElectroGas Ltd heat rate credit due to ElectroGas Ltd. It was noted that each heat rate credit reconciliation was to specify the amount of excess LNG stock, the volumes of excess LNG stock monetised or transferred to Enemalta, the excess LNG stock net proceeds, the gas net proceeds,³¹ and the Enemalta heat rate credit and/or the ElectroGas Ltd heat rate credit. Volumes of LNG and gas and proceeds in respect of such volumes were to be accounted for once in computing the Enemalta heat rate credit and the ElectroGas Ltd heat rate credit. Excess LNG stock was to be deemed monetised first by way of excess gas utilisation (as described below), and then the first to occur of the other ways to monetise excess LNG stock. Excess LNG stock could be monetised in several ways:
 - i. the delivery to Enemalta of energy and/or gas once the amount of gas and net electrical output actually taken by Enemalta was equal to or exceeded the Enemalta Take or Pay during a Supply Reference Period before the GSA Exit Date (termed ‘excess gas utilisation’) – with the net proceeds being the energy delivered in respect of gas and the gas delivery payment in respect of gas payable to ElectroGas Ltd;

³¹ The gas net proceeds were defined as an amount in euro for an hour and calculated through the deduction of the gas received by Delimara 4 in that hour in mmBTU from the multiplication of the Guaranteed Delimara 4 Heat Rate for that hour adjusted for actual ambient conditions and the net electrical output in MWh for that hour. This procedure was to be performed for all hours and its summation was to be multiplied by the effective gas price in €/mmBTU on or prior to the GSA Exit Date and by the Effective Commodity price after the GSA Exit Date. If this calculation was equivalent to less than zero, then the gas net proceeds were to be deemed equal to zero.

- ii. ElectroGas Ltd transferring title to LNG in an LNG Stock Sale except for a sale at Enemalta's request and not to Enemalta – with the net proceeds being the total proceeds received by ElectroGas Ltd from the transferring of LNG by ElectroGas Ltd, less reasonable, verifiable, incremental costs and taxes incurred by ElectroGas Ltd as a result of such transfer (comprising costs and taxes related to the transporting, marketing, selling and delivering of such LNG);
- iii. transfer of title to the excess LNG stock contracted to be delivered to ElectroGas Ltd and to which ElectroGas Ltd did not have title, prior to the delivery of such LNG to the gas facilities, other than at Enemalta's request – with the net proceeds being the total proceeds received or saved by ElectroGas Ltd from the transfer of LNG by its LNG supplier, less reasonable, verifiable, incremental costs and taxes incurred by ElectroGas Ltd as a result of such transfer;
- iv. the GSA Exit Date – with the net proceeds being amounts paid by Enemalta in line with the IA, insofar as such amounts relate to the excess LNG stock; and
- v. any other means adopted by ElectroGas Ltd to generate proceeds from Excess LNG Stock (other than a sale at Enemalta's request or a transfer of the facilities to Enemalta) – with the net proceeds being the total proceeds received by ElectroGas Ltd from the transfer of such excess LNG stock, less reasonable, verifiable, incremental costs and taxes incurred by ElectroGas Ltd as a result of such transfer of LNG, including costs and taxes related to the transporting, marketing, selling and delivering such LNG.

12.1.21 The Enemalta heat rate credit was to be equal to 10 per cent of the Excess LNG Stock Net Proceeds of Excess LNG Stock Monetisation. After the LNG Supply Term Expiration Date, the Enemalta heat rate credit was to be equal to 10 per cent of the Gas Net Proceeds. The ElectroGas Ltd heat rate credit was to be equivalent to 90 per cent of the cost of any excess LNG stock transferred to Enemalta in line with the provisions of the IA or of the proceeds received by Enemalta from the transfer of excess LNG stock sold at Enemalta's request less reasonable, verifiable, incremental costs and taxes incurred by Enemalta due to such transfer.

12.1.22 According to the amended IA, the Enemalta heat rate credit, delay liquidated damages interest and the trip credit were to be due and payable for the period of the relevant heat rate credit reconciliation, within thirty days of the due date from ElectroGas Ltd providing the relevant reconciliation, to the extent ElectroGas Ltd had such funds available for distribution in accordance with the terms of the Financing Agreements. These funds were to be distributed to the holders of ordinary share capital, in priority to any payment by ElectroGas Ltd to the holders of ordinary share capital. Meanwhile, accrued delay liquidated damages interest was to be payable after ten years from the Energy Delivery Date, but could be paid earlier at the option of ElectroGas Ltd. Provisions with respect to insufficient funds available for distribution to holders of ordinary share capital were also included in the amended IA, as was the offsetting of amounts due by Enemalta for start charges for mode starts.

12.1.23 Additions were made in the amended IA in terms of details that were to be included in the tax invoice to be submitted to Enemalta by ElectroGas Ltd. These comprised the volume of back-

fed gas, any conversion term credit due and payable to Enemalta and outstanding conversion term credit. Furthermore, during the Energy Conversion Term, the tax invoice was to comprise the volumes of gas delivered to Delimara 4, including the delivery dates and times of such volumes.

Maximum Amount of Aggregate Principal

12.1.24 The amended IA also included a schedule with the maximum aggregate principal of the term loan under the Financing Agreements. These amounts represented the maximum aggregate amounts payable by Enemalta in respect of the principal amounts outstanding and borrowed by ElectroGas Ltd to finance the project, essential in determining the ElectroGas Ltd Default Termination Value, the ElectroGas Ltd Force Majeure Fair Value, the Enemalta Force Majeure Fair Value and the Enemalta Default Fair Value (Figure 44 refers). In the prior version of the IA, the maximum amount of aggregate principal on or before the Energy Delivery Date was to be €380,000,000 and it had been noted that this applied until an update pursuant to the Supply Agreements Direct Agreement prior to the Final Effective Date was carried out.

Figure 44: Maximum amount of Aggregate Principal during different periods

Termination Date during the period	Maximum Amount of Aggregate Principal
30 November 2017 to 31 March 2018	€440,653,000
1 April 2018 to 30 September 2018	€440,653,000
1 October 2018 to 31 March 2019	€440,653,000
1 April 2019 to 30 September 2019	€433,535,000
1 October 2019 to 31 March 2020	€427,209,000
1 April 2020 to 30 September 2020	€425,844,000
1 October 2020 to 31 March 2021	€417,186,000
1 April 2021 to 30 September 2021	€414,343,000
1 October 2021 to 31 March 2022	€405,899,000
1 April 2022 to 30 September 2022	€403,968,000
1 October 2022 to 31 March 2023	€398,469,000
1 April 2023 to 30 September 2023	€397,079,000
1 October 2023 to 31 March 2024	€384,977,000
1 April 2024 to 30 September 2024	€382,259,000
1 October 2024 to 31 March 2025	€358,480,000
1 April 2025 to 30 September 2025	€357,767,000
1 October 2025 to 31 March 2026	€332,069,000
1 April 2026 to 30 September 2026	€330,867,000
1 October 2026 to 31 March 2027	€303,761,000
1 April 2017 to 30 September 2027	€299,454,000
1 October 2027 to 31 March 2028	€272,896,000
1 April 2028 to 30 September 2028	€267,978,000
1 October 2028 to 31 March 2029	€240,445,000
1 April 2029 to 30 September 2029	€237,357,000
1 October 2029 to 31 March 2030	€207,339,000

1 April 2030 to 30 September 2030	€203,446,000
1 October 2030 to 31 March 2031	€172,835,000
1 April 2031 to 30 September 2031	€165,724,000
1 October 2031 to 31 March 2032	€135,412,000
1 April 2032 to 30 September 2032	€127,411,000
1 October 2032 to 31 March 2033	€96,089,000
1 April 2033 to 30 September 2033	€90,164,000
1 October 2033 to 31 March 2034	€55,291,000
1 April 2034 to 30 September 2034	€47,820,000
1 October 2034 to 31 March 2035	€8,357,000
1 April 2035 to 30 September 2035	€0

Termination of the Project Agreements

12.1.25 Similar to the previous IA, Enemalta could terminate the Project Agreements due to a failure by ElectroGas Ltd to maintain the Delimara 4 Average Availability and the Gas Facilities Average Availability equal to or greater than the minimum average ability; however, an exception was made in the amended IA if during the Energy and Gas Conversion Term such failure was due to an LNG or gas shortage. An additional circumstance for termination by Enemalta was introduced in the IA. This related to the failure of ElectroGas Ltd to resume deliveries of gas and energy to Enemalta in line with the provisions of the IA in relation to an FSU Natural Force Majeure Event. A material breach by ElectroGas Ltd with respect to the Government Deed, which continued uncured for thirty days after notice of such breach from Enemalta, would entitle Enemalta to terminate the Project Agreements, unless this was caused by a breach by Enemalta of a Transaction Agreement or as a result of or in connection with a force majeure event. Enemalta was also entitled to terminate the Project Agreements due to a default by the emphyteuta pursuant to the Government Deed. Also amended in the IA was a circumstance where ElectroGas Ltd was the terminating party. In the amended IA, ElectroGas Ltd could also terminate the Project Agreements if Government materially breached any of its material obligations under the Government Deed and did not address such breach within 30 days from notice by ElectroGas Ltd to the Government and Enemalta.

12.1.26 The consequences of different termination scenarios were also amended. These are illustrated in Figure 45.

Figure 45: Termination scenarios and consequences thereof

Termination scenario	Party terminating (Previous IA)	Party terminating (Amended IA)	Consequences (Previous IA)	Consequences (Amended IA)
In instances of default by Enemalta after the Final Effective Date	ElectroGas Ltd	ElectroGas Ltd	ElectroGas Ltd could transfer the facilities to Enemalta on payment by Enemalta of the Enemalta Default Fair Value, together with any other amounts due. In case of termination after the Final Effective Date, Enemalta was to acquire the facilities on payment of the entire Enemalta Default Fair Value and other amounts due.	Enemalta was to pay the Enemalta Default Fair Value to ElectroGas Ltd, together with any other amounts due and payable to ElectroGas Ltd in accordance with the Transaction Agreements. Enemalta was to acquire the facilities on payment of the entire Enemalta Default Fair Value and other amounts due.
For convenience before/after the Final Effective Date	Enemalta	Enemalta	ElectroGas Ltd could transfer the facilities to Enemalta on payment by Enemalta of the Enemalta Default Fair Value, together with any other amounts due.	The situation before the Final Effective Date is not addressed in this Agreement. With respect to the situation following the Final Effective Date, Enemalta was to pay the Enemalta Default Fair Value to ElectroGas Ltd, together with any other amounts due and payable to ElectroGas Ltd. Enemalta was to acquire the facilities on payment of the entire Enemalta Default Fair Value and other amounts due.
For a prolonged Force Majeure Event or uninsurable event after the Final Effective Date	Enemalta	Enemalta	ElectroGas Ltd could elect to transfer the facilities to Enemalta on payment by Enemalta of the Enemalta Force Majeure Fair Value, if the force majeure event is not an Enemalta risk event.	If the Force Majeure Event giving rise to termination was not an Enemalta Risk Event, Enemalta was to pay the Enemalta Force Majeure Fair Value to ElectroGas Ltd, together with any other amounts due. Enemalta was to acquire the facilities on payment of the entire Enemalta Force Majeure Fair Value and other amounts due.
For a prolonged Enemalta risk event after the Final Effective Date	ElectroGas Ltd	Enemalta	Enemalta was to pay ElectroGas Ltd the Enemalta Default Fair Value, together with any other amounts due, and acquire the facilities.	Enemalta was to pay ElectroGas Ltd the Enemalta Default Fair Value, together with any other amounts due and acquire the facilities.

Transfer on invalidity or termination of the Site Lease Deed after the Final Effective Date	Enemalta/ ElectroGas Ltd	Enemalta/ ElectroGas Ltd	ElectroGas Ltd could elect to transfer the facilities to Enemalta. Compensation was to be paid by Enemalta, depending on the reason for termination. The IA made reference to the payment of the Enemalta Default Fair Value, the Enemalta Force Majeure Fair Value, the ElectroGas Ltd Default Termination Value, the ElectroGas Ltd Force Majeure Fair Value, or the Residual Sale Option Fair Value together with any other amounts due to ElectroGas Ltd depending on the context of termination. On payment, Enemalta was to acquire the facilities. If after the Final Effective Date there was an ElectroGas Ltd Event of Default and a claim on ElectroGas Ltd's assets occurred or continued, Enemalta was to reimburse ElectroGas Ltd for its reasonable additional costs due to the asset claim prior to Enemalta acquiring the facilities, accounting for proceeds paid to ElectroGas Ltd from insurance coverage, to put ElectroGas Ltd in the financial position it would have been in had the asset claim not occurred. ElectroGas Ltd was to use all reasonable efforts to mitigate any adverse effects of an asset claim and minimise such effects on the project.	ElectroGas Ltd could elect to transfer the facilities to Enemalta, or in the case of a number of circumstances, Enemalta could elect to acquire the facilities from ElectroGas Ltd. Compensation was to be paid by Enemalta, depending on the reason for termination. The IA made reference to the payment of the Enemalta Default Fair Value, the Enemalta Force Majeure Fair Value, the ElectroGas Ltd Default Termination Value, the ElectroGas Ltd Force Majeure Fair Value, or the Residual Sale Option Fair Value together with any other amounts due to ElectroGas Ltd depending on the context of termination. On payment, Enemalta was to acquire the facilities. If after the Final Effective Date there was an ElectroGas Ltd Event of Default and a claim on ElectroGas Ltd's assets occurred or continued, Enemalta was to reimburse ElectroGas Ltd for its reasonable additional costs due to the asset claim prior to Enemalta acquiring the facilities, accounting for proceeds paid to ElectroGas Ltd from insurance coverage, to put ElectroGas Ltd in the financial position it would have been in had the asset claim not occurred. ElectroGas Ltd was to use all reasonable efforts to mitigate any adverse effects of an asset claim and minimise such effects on the project.

12.1.27 The amended IA defined the sale option equity value as €35,000,000 in all circumstances, whereas before it had been equal to €27,000,000 on or after the GSA Exit Date. The definition of the Sale Option Fair Value was also amended to signify the reduction from such sale option equity value not only of the costs to reinstate the facilities as in the previous version of the IA but also of the delay liquidated damages amount, due and payable liquidated damages interest, and the trip credit due and payable at the termination date (to the extent that these were greater than the start charges for mode starts due and payable at the termination date).

12.1.28 Furthermore, the amended IA included changes to the definition of Enemalta Default Equity Compensation (defined in paragraph 6.3.112.b.ii), which became:

- a. the equity invested and compensation amount after the Final Effective Date but prior to the Open Cycle Energy Delivery Date; and
- b. the compensation amount, including all credit balances held by or on behalf of ElectroGas Ltd, excluding retained profits intended for distribution after the Open Cycle Energy Delivery Date;

in each case, less:

- the reinstatement cost;
- the FSU variations credit calculated as at the Termination Date;
- the delay liquidated damages amount and due and payable delay liquidated damages interest;
- the trip credit due and payable at the Termination Date (to the extent that this was greater than the start charges for mode starts due and payable at the Termination Date); and
- amounts owed to Enemalta by ElectroGas Ltd under any Project Agreement;

provided that the Enemalta Default Equity Compensation was not negative.

12.1.29 The amended IA further stated that compensation amounts for termination after the Open Cycle Energy Delivery Date, whether due to an ElectroGas Ltd Force Majeure Equity Compensation, Enemalta Force Majeure Equity Compensation or Enemalta Default Equity Compensation, were to be determined annually. The compensation amount at the end of the term for an ElectroGas Ltd Force Majeure Equity Compensation was to amount to €0; it was to be equivalent to €9,000,000 in the case of an Enemalta Force Majeure Equity Compensation and €51,261,000 in the case of an Enemalta Default Equity Compensation. The compensation amounts at the end of all reference periods are presented in Figure 46.

Figure 46: Compensation amounts for termination after the Open Cycle Energy Delivery Date

Values applicable at the Final Effective Date and at the end of each Reference Year	ElectroGas Ltd Force Majeure Equity Compensation	Enemalta Force Majeure Equity Compensation	Enemalta Default Equity Compensation
1 December 2017	€105,900,000	€115,943,000	€125,783,000
End of Reference Year 1	€105,900,000	€120,127,000	€130,003,000
End of Reference Year 2	€105,900,000	€116,996,000	€129,595,000
End of Reference Year 3	€98,304,000	€114,835,000	€130,255,000
End of Reference Year 4	€93,200,000	€112,858,000	€131,188,000
End of Reference Year 5	€88,889,000	€111,618,000	€132,984,000
End of Reference Year 6	€82,776,000	€108,525,000	€133,035,000
End of Reference Year 7	€74,498,000	€103,135,000	€130,865,000
End of Reference Year 8	€65,826,000	€97,174,000	€128,154,000
End of Reference Year 9	€56,292,000	€90,169,000	€124,429,000
End of Reference Year 10	€46,949,000	€83,157,000	€120,697,000
End of Reference Year 11	€38,007,000	€76,335,000	€117,175,000
End of Reference Year 12	€28,513,000	€66,840,000	€112,870,000
End of Reference Year 13	€18,419,000	€60,317,000	€107,747,000
End of Reference Year 14	€8,497,000	€51,815,000	€102,515,000
End of Reference Year 15	€0	€43,651,000	€97,581,000
End of Reference Year 16	€0	€34,401,000	€91,541,000
End of Reference Year 17	€0	€24,571,000	€84,861,000
End of Reference Year 18	€0	€9,000,000	€51,261,000

12.1.30 A number of terms relating to the GSA exit option were also amended. In particular, while according to the previous version of the IA, Enemalta could exercise this option for a GSA Exit Date on or after the Second Reference GSA Exit Date (14 August 2026) by providing notice to ElectroGas Ltd at any time prior to eight years from the LNG Supply Term Commencement Date, the amended IA provided for termination on or after the later of the Second Reference GSA Exit Date and the then LNG Supply Term Expiration Date by providing 12 months written notice to ElectroGas Ltd. The terms for opting for an Accelerated GSA Exit by Enemalta were also amended to allow for such termination, subject to at least 12 months written notice to ElectroGas Ltd for a GSA Exit Date, on another date prior to the then LNG Supply Term Expiration Date. Furthermore, references to the FSU Charter Credit were deleted from the amended IA with respect to the calculation of the GSA Exit Value to be paid if the GSA exit option was availed of.

12.1.31 Also noted in the IA was that ElectroGas Ltd could suffer damages that were difficult or impossible to determine if the Transaction Agreements were terminated after the Final Effective Date due to a breach by Enemalta or a Force Majeure Event. In such case, Enemalta and ElectroGas Ltd agreed that the options and compensation for the transfer of the facilities to Enemalta as provided in the IA were to comprise liquidated damages to ElectroGas Ltd for

such termination and that these were to be the sole and exclusive remedy of ElectroGas Ltd should such termination occur.

Other Matters

12.1.32 A number of other changes were included in the amended IA:

- a. the amended IA granted ElectroGas Ltd the right to install an 11kv power line between Delimara 4 and the gas facilities and an 11kv/3.3kv transformer on the leased premises in order to supply power to the gas facilities. This power line could replace the 3.3kv feeding line from the Enemalta station board;
- b. it was clarified that ElectroGas Ltd was allowed to install two cooling water pumps in a sole pump pit. Withdrawal of the sole pump pit from service for periods of routine maintenance could be carried out on 30 days advance written notice to ElectroGas Ltd and emergency maintenance could be carried out on shorter advance written notice by Enemalta acting as a reasonable and prudent operator, provided that the service continued as soon as practicable. It was noted that such withdrawal was not to be deemed a relief event or a force majeure event affecting ElectroGas Ltd;
- c. the definition of Enemalta Make Up Gas was amended to decrease the quantity equivalent to the amount of any LNG sold in line with an Enemalta Mitigation Sale in respect of the preceding supply reference period from the next gas and equivalent net electrical output to be taken by Enemalta. The definition of the Enemalta Mitigation Sale was also amended to account for sales taking place three months subsequent to the last supply reference period of the LNG Supply Term;
- d. the amended IA noted that extensions to the term of the IA, in line with certain conditions, could be carried out at any time subsequent to the Open Cycle Energy Delivery Date. These conditions remained the same as in the previous version of the IA;
- e. the Enemalta EPC Direct Agreements were referred to as EPC Consents. These were defined as comprising the Enemalta Delimara 4 EPC Consent (the consent to assignment of warranties to Enemalta in line with the IA, signed by the EPC Contractor for Delimara 4) and the Enemalta Gas Facilities EPC Consent (the consent to assignment of warranties to Enemalta in line with the IA, signed by the EPC Contractor for Delimara 4);
- f. reference to the Delimara 3 gas specification credit outstanding was removed from the amended IA. The term 'gas credit outstandings' was included, which definition comprised the previous Delimara 3 gas specification credit outstanding along with the conversion term credit outstanding;
- g. the amended IA further specified that the performance guarantee could be issued by BoV;

- h. the amended IA defined the Interface Agreement as dated 12 January 2015 instead of 12 December 2014 and that it had been entered into between ElectroGas Ltd, Siemens Aktiengesellschaft Österreich, J&P Avax SA, and URS Infrastructure and Environment UK Limited. The former version of the IA had also included the FSU owner, that is, Armada Floating Gas Storage Malta Ltd as a signatory to this Agreement. The NAO was not provided with a copy of the Interface Agreement, with Enemalta indicating that it was not privy to this Agreement in view of the fact that it was not a signatory;
- i. Enemalta was to indemnify and hold harmless ElectroGas Ltd from and against any claims by Vault Finance Ltd against facilities, premises, structures, materials or equipment owned, financed, procured, constructed and/or installed by ElectroGas Ltd at the leased premises, save where this arose from wilful or negligent act or omission of ElectroGas Ltd; and
- j. on the occurrence of a real rights acquisition, an asset claim on the assets of ElectroGas Ltd could not continue and no such asset claim could be carried out following a real rights acquisition. A real rights acquisition was defined as ElectroGas Ltd acquiring the leased premises in full ownership or through a direct emphyteutical grant on conditions at least substantially the same as, and for the remaining period, of the Site Lease Deed. Furthermore, such asset claims were not to be included as part of an Enemalta Risk Event which could cause material adverse or beneficial changes, with the provisions, obligations, entitlements and any reimbursements applicable in such events not being applicable for asset claims.

Changes to the Power Purchase Agreement

12.1.33 The Conversion Term Agreement also introduced several amendments to the PPA. Firstly, the definition of the 'base demonstrated MW Available for Delimara 4' was modified to account for the commencement of any uninsurable risk event, Enemalta risk event and/or relief event. Furthermore, a new operating obligation to be performed by ElectroGas Ltd was added. In this respect, ElectroGas Ltd was to, acting as a reasonable and prudent operator, choose the operating mode for Delimara 4 as stipulated in the PPA, accounting for efficiency of operation.

12.1.34 The Conversion Term Agreement also revised the applicability of the adjustment factor utilised to reflect any contract stock shortfalls attributable to ElectroGas Ltd in the computation of the Energy Availability Payment. While such adjustment was to initially apply during the Early Gas Period, the LNG Supply Term and the Energy and Gas Conversion Term, the amendment removed its applicability during the Conversion Term.

12.1.35 Moreover, the Conversion Term Agreement added a provision to the definition of the guaranteed Delimara 4 heat rate per hour adjusted for actual ambient conditions, which term was an element in the calculation of the Energy Delivery Payment. In this respect, in any hour during which imported electricity in MWh exceeded the net electrical output in MWh, the guaranteed Delimara 4 heat rate per hour adjusted for actual ambient conditions was to be

regarded as the average of the guaranteed Delimara 4 heat rate for each hour in the billing period. If the summation of all net electrical output in MWh for all hours in the billing period was zero, then the last prior billing period in which the summation of the net electrical output in MWh for all hours in the billing period was higher than one was to be considered.

12.1.36 The Conversion Term Agreement included another amendment with respect to the definition of additional charges. Aside from the summation of starts and reactive power, this was amended to include mode starts. A mode start was defined as being either a start of any gas turbine generator to closure of its generator circuit breaker, or any gas turbine generator switching from combined cycle, to open cycle and back to combined cycle, in either case in response to a dispatch instruction. Furthermore, starts and mode starts were to be payable in line with payment terms stipulated in the IA, including the offsetting of amounts due by Enemalta for start charges for mode starts from amounts due and payable to Enemalta for the Enemalta heat rate credit, delay liquidated damages interest and trip credit. Charges for mode starts were to be computed by multiplying the mode start charge for each dispatch mode start during the calendar month. The mode start charge was:

- a. zero with respect to any mode start prior to 1 December 2017;
- b. from 1 December 2017 until 31 December 2017 (i) zero for the first six mode starts, and (ii) €10,000 with respect to each mode start from the seventh mode start from 1 December 2017; and
- c. from 1 January 2018 until the termination date (i) zero for the first twenty-four mode starts in a PPA contract year, and (ii) €10,000 with respect to each mode start from the twenty-fifth mode start in a PPA contract year from 1 January 2018, provided that if the final PPA contract year was not a 12-month period, the preceding allowance of 24 mode starts would be pro-rated for such part 12-month period.

12.1.37 The Conversion Term Agreement also added a provision to the PPA with respect to the calculation of the additional charge for reactive power supplied beyond the minimum functional specifications. In this respect, the reactive power supplied was to be measured by operational metering.

12.1.38 New provisions relating to dispatch procedures were included in the PPA. ElectroGas Ltd was to make all declarations and amended declarations of initial and amended declared MW available in good faith, and was only to declare availability with regard to Delimara 4 when this was actually available for dispatch by Enemalta.

12.1.39 Lastly, the Conversion Term Agreement amended a number of provisions in the PPA in relation to the contract outage process and granted the possibility to utilise additional days as part of such contract outage.

Changes to the Gas Supply Agreement

12.1.40 In addition to changes made to the IA and the PPA, the Conversion Term Agreement also resulted in an amendment to the GSA. The adjustment factor utilised in the formula for the Gas Availability Payment to reflect any contract stock shortfalls attributable to ElectroGas Ltd during the Early Gas Period, the LNG Supply Term and the Energy and Gas Conversion Term was not to remain applicable during the Energy and Gas Conversion Term.

Changes to the Site Services Agreement

12.1.41 Furthermore, a charge in the Site Services Agreement was reduced pursuant to the Conversion Term Agreement. In this respect, the charge ElectroGas Ltd was to pay for demineralised water for the Delimara 4 plant and the operation of the gas facilities was reduced from €22/m³ to €14/m³.

Assignment and Novation

12.1.42 The Conversion Term Agreement restricted the assignment and novation of the rights and obligations under the Agreement held by Enemalta and ElectroGas Ltd. The parties were to obtain the prior consent of the other party in order to assign, novate, transfer or dispose of any rights and obligations under the Agreement. It was also noted that should the IA be assigned, transferred and/or novated, the Conversion Term Agreement would also be assigned, novated and/or transferred to the same party.

12.2 Security of Supply Agreement

12.2.1 On 15 December 2017, the Government, Enemalta and ElectroGas Ltd entered into an SSA, wherein it was acknowledged that ElectroGas Ltd had agreed to provide a long-term supply of electricity and gas to Enemalta pursuant to, inter alia, an IA, a PPA and a GSA, all of which were executed by the Parties on 14 April 2015. Moreover, Enemalta and ElectroGas Ltd had entered into a Conversion Term Agreement on 30 November 2017 in order to, among others, finalise the LNG and gas supply arrangements for the project. It was further acknowledged that the supply agreements were key for the security of electrical power supply in Malta, insofar as these would constitute the principal source of this essential utility. Accordingly, ElectroGas Ltd acceded to Government's wish to enter into this Agreement to ensure that, should any circumstance materialise which could potentially lead to the termination of the Supply Agreements, the Government would be able to ensure continuity of security of an uninterrupted supply of electrical power in Malta, under the same terms and conditions of the Supply Agreements. Moreover, it was further asserted that the Government's intention to enter into an SSA was announced prior to the submission of bids and before ElectroGas Ltd was chosen as the preferred bidder. Notwithstanding this, the NAO noted that it was in the bidders' conference and through clarifications to the RfP provided to bidders that Enemalta indicated that the project would be backed by an SSA. The NAO contends that Government's intention to

assume Enemalta's obligation to purchase electricity and gas should have been declared at the outset with the publication of the EoIC.

- 12.2.2 The SSA was to come into effect on the signing thereof, and was to continue in force and effect until the later of (a) the date that was 25 years after the date of signing of the Agreement, that is 14 December 2042, and (b) the expiry or termination of all of the Supply Agreements. Moreover, the Government, Enemalta and ElectroGas Ltd could not terminate, suspend, cancel or accept as repudiated this Agreement prior to its expiry in accordance with this proviso.
- 12.2.3 The Agreement provided for action that was to be taken should trigger events occur. Under such circumstances, Government was required to, within five days, deliver a notice to ElectroGas Ltd and Enemalta informing them that a Government trigger event had occurred. On the other hand, if a company trigger event occurred, then ElectroGas Ltd was required to deliver a notice to the Government and Enemalta informing them that a company trigger event had occurred. The Government's and ElectroGas Ltd's rights and obligations with respect to the submission of other trigger event notices on the occurrence of further trigger events were not to be affected by the occurrence of an Assumption Date or a Step-Out Date. According to the SSA, the Assumption Date was the day being five days from the date on which a trigger event notice was sent by either the Government or ElectroGas Ltd, or at any time on 30 days' notice from the Government to ElectroGas Ltd. A Step-Out Date was defined as the date, after an Assumption Date, of the assignment and novation by the Government of its rights and obligations pursuant to the Supply Agreements to an assignee.
- 12.2.4 Further stipulated in the SSA were provisions relating to a Step-In Event, whereby the Government was to assume Enemalta's rights and obligations to purchase electricity and gas in accordance with the terms of the Supply Agreements, in its own name, on and from the Assumption Date until a Step-Out Date. The Government was to assume such rights and obligations in its own name and not as Enemalta's agent. Furthermore, Enemalta was to be deemed to have assigned and novated to Government its rights and obligations pursuant to the Assumed Agreements, that is the Supply Agreements and the Supply Agreements Direct Agreement. On and from the Assumption Date, ElectroGas Ltd and the Lenders were to be released from all obligations and liabilities towards Enemalta in respect of the assigned rights, title, benefit and interest. Such obligations and liabilities were, on and from the Assumption Date, to be owed solely to Government as if Government was an original party to the Assumed Agreements instead of Enemalta. Without prejudice to these provisions, with effect from the Assumption Date, the Government was to, by way of novation, be substituted in the place of Enemalta as the principal debtor and obligor of Enemalta's obligations and liabilities towards ElectroGas Ltd and the Lenders pursuant to the Assumed Agreements.
- 12.2.5 With regard to the provision relating to a Step-Out event, the Government was, after an Assumption Date, entitled to assign and novate its rights and obligations to the Assignee, provided that such assignment and novation was made prior to the Termination Date. Such

assignment and novation was to be made not later than 10 days from Government’s written notice and on condition that the following provisions were met:

- a. ElectroGas Ltd, the Government and the Assignee having entered into a Supply Agreement Assumption Agreement, as attached in Schedule 1 to the SSA;
- b. ElectroGas Ltd, the Government, Enemalta and the Assignee having entered into an SSA Novation Agreement, as attached in Schedule 2 to the SSA, substituting by way of an assignment and novation the Assignee for Enemalta as a party to this Agreement, and releasing Enemalta from its rights, obligations and liabilities emanating from this Agreement;
- c. ElectroGas Ltd, the Lenders, and the Assignee having entered into a new agreement on fundamentally the same terms as those stipulated in the Supply Agreements Direct Agreement, simultaneously releasing Enemalta from the Supply Agreements Direct Agreement;
- d. ElectroGas Ltd, the Government, the Assignee and the Lenders having entered into an acknowledgement and consent agreement as set out in Schedule 3 to the SSA;
- e. the Government, the Lenders, the Assignee and ElectroGas Ltd, as applicable, had entered into a direct agreement substantially in the form of the Supply Agreement Direct Agreement;
- f. the Attorney General had issued an opinion in relation to the authorisation and capacity of the Government signatories to execute on behalf of the Government, the Supply Agreement Assumption Agreement and the SSA Novation Agreement;
- g. legal opinions were provided in form and substance acceptable to ElectroGas Ltd, Enemalta and the Government confirming (i) the authorisation and capacity of ElectroGas Ltd’s signatories to execute the Supply Agreement Assumption Agreement and the SSA Novation Agreement on behalf of Electrogas Ltd and (ii) the authorisation and capacity of the Enemalta signatories to execute the SSA Novation Agreement on behalf of Enemalta, and (iii) the authorisation and capacity of the Assignee signatories to execute the Supply Agreement Assumption Agreement and the SSA Novation Agreement on behalf of the Assignee;
- h. ElectroGas Ltd and the Lenders had obtained satisfactory legal opinions as to the legality, validity and enforceability of the rights and obligations of the Parties pursuant to the documents in (a), (b), (c) and (d) above;
- i. the Lenders and ElectroGas Ltd had adequately performed all required KYC and other applicable checks with respect to the Assignee; and

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- j. no Enemalta Event of Default had materialised and no prior Termination Notice had been issued.

12.2.6 On and from the Step-Out Date until a further Assumption Date, the Assignee, in its own name and not as the Government's agent, was to assume Government's obligations to purchase electricity and gas in accordance with the Supply Agreements, on the same terms and conditions. In consideration of the assumption by the Assignee of Government's obligations, the Government was to be deemed to have assigned to the Assignee its rights, title, benefit and interest arising from or accrued pursuant to the Supply Agreements at any time before, on or after the Step-out Date. Simultaneously, ElectroGas Ltd was to be released from all obligations and liabilities towards Government in respect of the mentioned assigned rights, title, benefit and interest and such obligations and liabilities were to be, as from the Step-Out Date, owed solely to the Assignee as if the Assignee was an original party to the Supply Agreements instead of the Government. Additionally, with effect from the Step-Out date, the Assignee was by way of novation substituted in the place of Government as principal debtor and obligor of Government's obligations and liabilities towards ElectroGas Ltd, as if the Assignee was an original party to the Supply Agreements.

12.2.7 The SSA further stipulated that the Parties to this Agreement could not assign, novate or in any other manner transfer or dispose of any or all of its rights and obligations, whether for consideration or otherwise, without the prior written consent of the other Parties. Exceptions to this condition were as follows:

- a. ElectroGas Ltd could assign and/or transfer and/or novate its rights and/or obligations under this Agreement to the Lenders or to their agent or trustee for the purpose of providing security under the Financing Agreements. Furthermore, ElectroGas Ltd could assign, transfer or novate any or all of its rights and/or obligations pursuant to the SSA in connection with the enforcement of such security; and
- b. in the case that Enemalta or the Assignee assigned or novated to a third party its rights and obligations pursuant to the Supply Agreements in accordance thereto, then such assignment and novation were contingent on the transfer conditions, cited in paragraph 12.2.5, being fulfilled in respect of the Transferee.

12.2.8 ElectroGas Ltd made several representations and warranties to the other parties of the SSA. Cited in this respect was that it was duly organised, had the right, power and authority to enter into this Agreement, the execution of the SSA and the Supply Agreements were duly authorised by all necessary corporate action, and entry and performance thereto were not in conflict with any laws or regulations. Likewise, Enemalta and the Government made similar representations and warranties to the other Parties to this Agreement.

12.2.9 Further to a decision of the EC dated 11 January 2017, Ref SA.45779 (2016/NN) – Malta, the Government undertook to:

- a. by 30 June 2018, adopt and maintain a new act confirming its consent for Enemalta to delegate to ElectroGas Ltd part of the PSO entrusted to Enemalta on 2 October 2014. At the time of reporting, legislation in this regard was not yet enacted; however, the Permanent Secretary MOT maintained that all decisions as reflected in the contracts between Enemalta and ElectroGas Ltd, through which Enemalta entrusted part of its PSO to ElectroGas Ltd, were approved by Cabinet;
- b. as per Article 6(2) of Commission Directive 2006/111/EC, ensure that its relationship with ElectroGas Ltd remained transparent. In particular, the Government would maintain all relevant project financial information for five years and would provide the EC with such information the latter may request. Furthermore, the Government would publish the content and duration of the PSO, together with the identity of the entrusted undertaking at that time as per applicable EU regulations;
- c. publish the below information on a publicly available website:
 - the outcome of the public consultations undertaken in the compilation of the 2012 National Energy Policy for Malta,
 - the content and duration of the PSO, in particular a description of the main terms of the Supply Agreements and this Agreement, as well as their duration,
 - identify ElectroGas Ltd as the beneficiary of the aid and that the service of general economic interest (SGEI) was to be performed in Malta; and
 - identify the aid amount on a yearly basis; as well as
- d. comply with other applicable obligations under the SGEI Framework.

Queries were raised by the NAO regarding Government’s obligation to identify and publish the aid amount on a yearly basis in line with the SSA, which in turn referred to the EC decision Ref SA.45779 (2016/NN) – Malta. According to the Permanent Secretary MOT, a draft report indicating the amount of aid provided to ElectroGas Ltd was submitted to the SAMB for onward transmission to the EC. The amount of aid indicated in this regard for 2017 was €37,130,000.

12.2.10 The SSA further stipulated that Enemalta expressly acknowledged and accepted that the occurrence of an Assumption Date would constitute a breach of the obligations assigned to Enemalta by the Government, for the provision of a SGEI, to supply electrical power in Malta and to ensure the continuity and security of such supply. Consequently, on the occurrence of an Assumption Date, Enemalta acknowledged and accepted that it was to be responsible and liable for all and any additional cost and liability incurred by the Government during a Step-in Period.

12.2.11 Other provisions cited in the SSA addressed the waiver of defences, the exercise of rights and remedies, including third party rights, as well as the waiver of sovereign immunity. The Agreement also provided the procedure that was to be adopted should disputes arise. In instances of controversy, disagreement or dispute between any of the Parties in relation to the performance, interpretation or application of this Agreement, any of the Parties to the dispute was to serve on the other Parties a written notice, indicating the desire to have the dispute reviewed and settled. The Parties to the dispute were to use all reasonable attempts to settle any dispute between them in good faith; however, should such attempts prove futile, the Parties could refer the dispute for arbitration.

Schedule 1 – Form of Supply Agreement Assumption Agreement

12.2.12 Schedule 1 to the SSA related to the Supply Agreements entered into between ElectroGas Ltd and Enemalta and, should an assumption event occur, would involve the Government, Electrogas Ltd and the Assignee. According to the Supply Agreement Assumption Agreement, the terms as defined in the SSA were to retain the same meaning.

12.2.13 Through the Supply Agreement Assumption Agreement, the Government would request that the Assignee accepts and procures the transfer to the Assignee of all the rights, obligations and liabilities of Government under the Supply Agreements as from the Step-Out Date.

Schedule 2 – Form of Security of Supply Agreement Novation Agreement

12.2.14 Schedule 2 related to the SSA entered into between the Government, Enemalta and ElectroGas Ltd and was to involve, in the eventuality that such novation occurred, the Government, Enemalta, ElectroGas Ltd and the Assignee.

12.2.15 The SSA Novation Agreement stipulated that the terms as defined in the SSA were to have the same meaning. On and from the date of this Agreement, as between the Government, Enemalta and ElectroGas Ltd, the Assignee was to assume, in its own name, the rights and obligations of Enemalta in line with the terms of the SSA. Furthermore, on and from the Assignment Date, ElectroGas Ltd and the Government were to be released from all obligations and liabilities towards Enemalta in relation to the assigned rights, title, benefit and interest. Such obligations and liabilities were, subject to the rights of Government and ElectroGas Ltd, on and from the Assignment Date owed solely to the Assignee as if the latter was the original party to the SSA instead of Enemalta.

12.2.16 Notwithstanding the occurrence of such an assignment event, the Government, the Assignee and ElectroGas Ltd agreed and confirmed that such assignment would not terminate the SSA, nor would such assignment exempt ElectroGas Ltd from its obligation to comply with its obligations and liabilities under the SSA in favour of the Assignee and the Government.

Schedule 3 – Security of Supply Agreement Acknowledgement and Consent

- 12.2.17 The SSA Acknowledgement and Consent was entered into by the Government, Enemalta, the Lands Authority acting on behalf of Government, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd on 15 December 2017. It was acknowledged that the Government, Enemalta and ElectroGas Ltd had entered into an SSA on or about the date of this Acknowledge and Consent in relation to the Supply Agreements. Moreover, the security trustee had requested that the Parties to the Supply Agreements enter into this Acknowledgement and Consent to record certain matters agreed in relation to the SSA.
- 12.2.18 This Acknowledgement and Consent was to remain in full force and effect until the earlier of (a) the date on which the security trustee had informed the Government and Enemalta that all liabilities of ElectroGas Ltd to the Secured Parties have been discharged in full, and (b) the date of expiry of the SSA.
- 12.2.19 The benefit of this Acknowledgement and Consent was to be held by the security trustee, both for itself and as the security trustee for the Secured Parties. Furthermore, nothing in this Acknowledgement and Consent constituted the security trustee as agent, trustee or fiduciary of ElectroGas Ltd, Enemalta or the Government. Nonetheless, the security trustee could assign or transfer its rights and obligations under this Acknowledgement and Consent to a successor security trustee under the Finance Documents without the consent of the Government, Enemalta or ElectroGas Ltd. On the other hand, the rights and obligations of the Government, Enemalta and ElectroGas Ltd under this Acknowledgement and Consent could not be assigned without the prior consent of the security trustee, except as provided for in the Supply Agreements, the Supply Direct Agreement and the SSA.
- 12.2.20 The Acknowledgement and Consent also stipulated that ElectroGas Ltd was to give notice to the Government, the Lands Authority and Enemalta that it had assigned to the security trustee its rights in and to, and the benefit of the SSA and the Delimara Security Agreement dated on or about the date of this Acknowledgement and Consent.
- 12.2.21 ElectroGas Ltd and the security trustee were to give notice to the Government and Enemalta that the security trustee had agreed that ElectroGas Ltd was to remain entitled to exercise all its rights, powers, discretions, claims and remedies in respect of the SSA subject to the provisions of this Acknowledgement and Consent. However, such entitlement was to remain in effect until the security trustee issued a notice to the Government and Enemalta confirming that:
- a. an event of default had occurred and was continuing pursuant to ElectroGas Ltd’s financing agreements with the Secured Parties; and
 - b. the Secured Parties had elected to enforce the Assignment.

12.2.22 In cases where the Government or Enemalta Ltd became aware of any material or potential breach by the Government, Enemalta or ElectroGas Ltd, the Government and Enemalta undertook to notify the security trustee as soon as reasonably practicable. Furthermore, the security trustee was entitled to preserve and enforce any right or claim by ElectroGas Ltd pursuant to the SSA, to the extent and within the parameters that ElectroGas Ltd was entitled to make under the terms of the SSA. This provision was to be applicable whether or not any event of default under the Finance Documents had occurred or was continuing. In the event that an Enforcement Notice was issued by the security trustee, the latter was entitled to give or make notices and demands regarding the exercise of all rights, powers, discretions, claims and remedies arising from the SSA. The Government and Enemalta were to accept such notices and demands as valid.

12.2.23 The Government, Enemalta and ElectroGas Ltd were to perform or comply with the terms of the SSA, which terms were to be performed or complied with by each of the Parties. Furthermore, in the event that:

- a. following a change in law after the date of this Acknowledgement and Consent;
- b. the Government or Enemalta failed to adhere with any conditions as set out in the decision of the EC in relation to the Project dated 11 January 2017 or a judgement of the courts of Malta; or
- c. the SSA was or was held to be illegal, invalid, void, voidable or unenforceable by any party thereto:

then Government's and Enemalta's obligations and liabilities pursuant to this proviso were to be determined as if the SSA were legal, valid, binding and enforceable in accordance with its terms.

12.2.24 By way of security, the Government and Enemalta were authorised and instructed to effect all payments due or which could become due from them to ElectroGas Ltd under the SSA. Such payments were to be credited to the bank account as directed by the security trustee. The Acknowledgement and Consent further stipulated that, notwithstanding the assignment, ElectroGas Ltd was to remain solely liable to both the Government and Enemalta for the performance of all of the obligations and liabilities assumed by it in relation to the SSA. Such obligation or liability was not to be borne by the security trustee or any of the Secured Parties. However, without prejudice to this proviso, the Government and Enemalta were to accept the performance of any of the obligations of ElectroGas Ltd under the SSA which was procured by or on behalf of the security trustee and that such performance, to the extent performed, satisfied the obligations of ElectroGas Ltd under the SSA.

12.2.25 The security trustee could consent to the novation of the Supply Agreements Direct Agreement as provided for in the SSA. On and from the Assumption Date, the security trustee, ElectroGas

Ltd and Enemalta were to be released from obligations towards each other under the Supply Agreements Direct Agreement, whether arising prior to or after the Assumption Date. Moreover, their respective rights against these parties were also to be cancelled. Subsequent to such novation, the security trustee, ElectroGas Ltd and the Government were to assume responsibility to each other in respect of the discharged rights and obligations as if the Government was an original party to the Supply Agreements Direct Agreement in place of Enemalta.

12.2.26 In the event of a privatisation or other change in the Government's ownership of, or in the legal status or nature of Enemalta, the Government was to ascertain that the obligations of Enemalta continued in full force and effect. These obligations were to be assumed by the entity which would succeed in the gas and/or electricity business of Enemalta.

12.2.27 In the circumstance that the SSA was terminated due to bankruptcy or other insolvency proceedings concerning ElectroGas Ltd, the Government and Enemalta were, at the request of the security trustee, to enter into a new agreement with the security trustee or its designee on substantially the same terms as the SSA. Moreover, at the request of the security trustee, the Government, Enemalta and ElectroGas Ltd were to enter into a new Acknowledgement and Consent with any new Secured Party or with any substitute or agent or trustee. The new agreement had to be substantially on the same terms as the previous Acknowledgement and Consent.

12.2.28 The Government consented to ElectroGas Ltd and its shareholders to create, register and perfect a pledge of shares of ElectroGas Ltd in favour of the Secured Parties. Such share pledge was not to become effective until BoV, acting in the capacity of facility agent under the Bridge Loan Facility Agreement, confirmed to Government that the amounts due and payable under the Bridge Loan Facility Agreement had been paid in full. Furthermore, the Government reconfirmed its consent to the change to the Articles of Association of ElectroGas Ltd dated on or about 12 December 2017, in connection with the creation of share pledges and transfer restrictions. The Government agreed that on the occurrence of first drawdown pursuant to the Finance Documents, the conditions in the Articles of Association in relation to Financial Close would be deemed satisfied.

12.2.29 Appended to the SSA Acknowledgement and Consent was a schedule titled Form of Transfer Certificate. Pursuant to the Transfer Certificate, the security trustee requested that the Substitute accepted and procured the transfer to the Substitute of all the rights, title and interest of and all the obligations of ElectroGas Ltd under the SSA and the Acknowledgement and Consent by countersigning the Transfer Certificate to the Government and Enemalta. The Substitute accepted and procured the transfer requested by the security trustee by countersigning this Transfer Certificate to the Government and Enemalta.

12.2.30 Furthermore, the Substitute agreed with the Government and Enemalta that it would perform in accordance with the terms of the SSA and the Acknowledgement and Consent after the delivery of the Transfer Certificate to the Government and Enemalta.

12.3 Other Financial Closing-related Agreements

12.3.1 A key date in the cycle of the project was Financial Closing, that is, the date on which all conditions precedent in accordance with the Financing Agreements had been satisfied or waived. Financial Closing was achieved in early January 2018; however, in the months leading to this, a number of agreements, unrelated to one another but related to the overall project, were entered into by ElectroGas Ltd with Enemalta, or other Government entities, or third parties. These agreements addressed matters that were still pending, but that had to be concluded prior to Financial Closing.

Security by Title Transfer Agreement

12.3.2 ElectroGas Ltd and BNP Paribas (Suisse) SA entered into a Security by Title Transfer Agreement on 20 January 2017. Through this Agreement, BNP Paribas agreed to provide trading facilities to ElectroGas Ltd for the purpose of funding (a) the purchase of LNG, and (b) the costs of ancillary services related to the purchase and supply of LNG and gas, such as but not limited to freight, insurance, storage, price and/or currency hedging transactions. BNP Paribas agreed to provide cash advances and/or documentary credits, bank guarantees or similar instruments and to conduct or guarantee hedging transactions in terms of the Facility Agreement. As a precedent to the obligations borne by BNP Paribas as the lender, the Bank required security over certain receivables due to ElectroGas Ltd, in the form of the assignment of energy and gas delivery payments payable by Enemalta to ElectroGas Ltd.

12.3.3 Enemalta was requested to waive its set-off rights over such payments through the acknowledgement as set out in the Security by Title Transfer Agreement. Through this acknowledgement, Enemalta was to confirm that all payments of receivables due by it and payable to ElectroGas Ltd under the Supply Agreements were to be paid in the bank account indicated in the Agreement in favour of BNP Paribas. This was accepted subject to a number of conditions, namely that such waiver:

- a. was to be effective only until 31 May 2017 after which date Enemalta was to have the right to set-off or to net-off any amount due to it by ElectroGas Ltd against the receivables in terms of the Supply Agreements; and
- b. was not to apply to any amounts due to Enemalta by ElectroGas Ltd which exceeded in value the amounts outstanding and due by ElectroGas Ltd to BNP Paribas from time to time in terms of the Facility Agreement secured by the Security by Title Transfer Agreement.

The acknowledgement by Enemalta was signed on 27 January 2017.

12.3.4 On 28 December 2017, BNP Paribas informed Enemalta that, pursuant to a confirmation of a release dated 12 December 2017, (a) the Security by Title Transfer was terminated; (b) all security and rights over the receivables provided thereunder were released and (c) all rights,

title and interest vested in the Bank under or in connection with the acknowledgement were immediately cancelled and released. The NAO noted that the facility and relative security was terminated prior to financial closing.

Implementation Agreement dated 14 April 2015: Gas Facilities Overcapacity Design

12.3.5 On 30 November 2017, Enemalta informed ElectroGas Ltd that with regard to the Minimum Functional Specifications relating to the gas facilities as per Schedule 1 to the IA, specifically the last paragraph stating that, “the regasification plant shall be designed for a minimum of 10 per cent overcapacity in respect to gas requirements for Delimara 4 and Delimara 3”, Enemalta acknowledged that it was not possible to test the overcapacity design requirement with the infrastructure then available at the respective site. Enemalta also acknowledged that part of the overcapacity design requirement was already being utilised given that the Delimara 3 gas utilisation requirements were higher than originally expected due to plant optimisation during conversion. On this basis, Enemalta agreed that ElectroGas Ltd was deemed to have satisfied the overcapacity design requirement.

Implementation Agreement dated 14 April 2015: Excise Tax

12.3.6 In correspondence dated 30 November 2017, Enemalta informed ElectroGas Ltd that the amounts due and payable by ElectroGas Ltd pursuant to the Transaction Agreements were exclusive of excise taxes payable in connection with the procurement, importation, supply and sale of LNG, gas and energy. Moreover, Enemalta agreed to reimburse ElectroGas Ltd in respect of such taxes incurred by the latter, as required under the IA.

Direct Agreements Concerning the Assignment of Rights to the Security Trustee

12.3.7 Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd entered into four Direct Agreements on 14 December 2017, namely the:

- a. Site Lease Deed Direct Agreement;
- b. Site Services Agreement Direct Agreement;
- c. Electricity Connection Agreement Direct Agreement; and
- d. Supply Agreements Direct Agreement.

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The Direct Agreements were to remain in full force and effect until the date on which HSBC Corporate Trustee Company (UK) Ltd informed Enemalta that ElectroGas Ltd's liabilities to the secured parties were fully discharged. The secured parties comprised:

- a. BoV plc;
- b. HSBC Bank Malta plc;
- c. KfW IPEX-Bank;
- d. Natixis London Branch;
- e. Crédit Industriel et Commercial;
- f. BNP Paribas Fortis SA/NV;
- g. DZ Bank AG London Branch;
- h. Société Générale;
- i. FCP Rivage Euro Debt Infrastructure 2;
- j. Arguin Infrastructure;
- k. any bank or other financial institution providing hedging or working capital facilities to ElectroGas Ltd; and
- l. any trustee or agent acting for and on behalf of the above-mentioned, and any successor, assignee or transferee of any of the above-mentioned, in each case to the extent that such person is a beneficiary of the trusts subject to which HSBC Corporate Trustee Company (UK) Ltd holds the benefit of any of these Direct Agreements.

12.3.8 According to the Direct Agreements, ElectroGas Ltd had assigned to HSBC Corporate Trustee Company (UK) Ltd all its rights in and to and the benefit of the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements, that is, the IA, the Conversion Term Agreement, the PPA and the GSA. Such assignment was undertaken pursuant to a security assignment dated on or about 14 December 2017. The HSBC Corporate Trustee Company (UK) Ltd was also granted particular direct rights relating to the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements. The assignment of rights and benefits was a requirement precedent to the provision of funding to ElectroGas Ltd under the Finance Agreements by the secured parties. In submissions made to the NAO, Enemalta specified that the security assignment referred to an

agreement between ElectroGas Ltd and its lenders through which ElectroGas Ltd assigned its rights to the relevant agreements to its lenders through HSBC Corporate Trustee Company (UK) Ltd. Enemalta was not in possession of a copy of this document.

12.3.9 The Direct Agreements included provisions relating to information shared between the parties to the Agreements. In this respect, Enemalta was to provide HSBC Corporate Trustee Company (UK) Ltd with copies of all material notices and demands submitted by ElectroGas Ltd to it pursuant to a number of clauses in the:

- a. Site Lease Deed - relating to termination, force majeure events, disputes and the process for the appointment of experts;
- b. Site Services Agreement - relating to the suspension of services;
- c. Electricity Connection Agreement - relating to the disconnection and de-energisation of ElectroGas Ltd's connection to Enemalta's connection equipment; and
- d. IA - relating to non-conforming supply, material adverse and beneficial changes, termination and the GSA exit option.

12.3.10 Furthermore, Enemalta was to provide other information reasonably requested by HSBC Corporate Trustee Company (UK) Ltd relating to the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements. In addition, following notification by HSBC Corporate Trustee Company (UK) Ltd pursuant to a clause in the Direct Agreements, Enemalta was to accept as valid any notices or demands given or made by HSBC Corporate Trustee Company (UK) Ltd under or pursuant to the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements. In this respect, Enemalta was to exclude any conflicting directions given by ElectroGas Ltd, to the extent that ElectroGas Ltd could have properly given or made such notices or demands under the terms of relevant Agreements.

12.3.11 According to the Supply Agreements Direct Agreement, Enemalta had received a notice dated 20 January 2017 in respect of security granted by ElectroGas Ltd in favour of BNP Paribas (Suisse) SA in respect of receivables, and any extension thereof. In submissions made to the NAO, Enemalta outlined that this notice related to a working capital facility made available to ElectroGas Ltd by BNP Paribas through a master banking facility agreement dated 12 January 2017, reference to which was made in paragraph 12.3.2. This facility was intended to be utilised for financing shipments of LNG on a rolling basis. In this respect, BNP Paribas required security in the form of an assignment of the energy and gas delivery payments payable by Enemalta to ElectroGas Ltd. Enemalta had agreed to make these payments to a designated account held by BNP Paribas. Enemalta also noted that it was requested to waive its set-off rights over such payments and that this had only been limitedly accepted. The facility and relative security were terminated, pursuant to a confirmation of release dated 12 December 2017, prior to financial closing being achieved.

12.3.12 The Direct Agreements also regulated the exercise of ElectroGas Ltd's rights under the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements. In this respect, ElectroGas Ltd could exercise all the rights, powers, discretions, claims and remedies it would have had were it not for the assignment. Such entitlement was subject to the conditions of the Direct Agreements and would not be valid if HSBC Corporate Trustee Company (UK) Ltd issued an enforcement notice because of a default event continuing unremedied and unwaived pursuant to the Finance Documents. On the issue of an enforcement notice, HSBC Corporate Trustee Company (UK) Ltd could give notices or make demands relating to the exercise of rights, powers, discretions, claims and remedies arising under or in respect of the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements, and Enemalta was to agree to these. Should any conflict between the communications received from ElectroGas Ltd and from HSBC Corporate Trustee Company (UK) Ltd arise, Enemalta was to consider the communication of the latter as that prevailing. This was to the extent that ElectroGas Ltd could have properly given such notice or made such demand under the provisions of the relevant Agreement.

12.3.13 In addition, the Direct Agreements included provisions with respect to ElectroGas Ltd's liabilities under the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements. ElectroGas Ltd was to remain liable, in spite of the assignment, to Enemalta for the performance of all the obligations and liabilities assumed by it in respect of the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements.

12.3.14 According to the Direct Agreements, neither HSBC Corporate Trustee Company (UK) Ltd nor any of the secured parties were to have any obligation or liability. An exclusion to this provision was any obligation or liability assumed while acting in the capacity of a substitute or additional obligor in line with particular clauses of the Direct Agreements. The relevant clauses related to step-in (the additional obligor becoming a party to the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and/or the Supply Agreements), step-out (the additional obligor terminating its obligations under such Agreements) and novation. The Direct Agreements defined the term 'substitute' as another person taking on the rights, benefits, obligations and remedies of ElectroGas Ltd under the respective relevant Agreement. In turn, an additional obligor was defined in the Direct Agreements as any of:

- a. HSBC Corporate Trustee Company (UK) Ltd;
- b. a person selected by HSBC Corporate Trustee Company (UK) Ltd, authorised under any applicable laws to carry out business in Malta;
- c. any liquidator, receiver, administrator, provisional administrator, special controller, custodian or other similar official appointed in respect of ElectroGas Ltd or any of its assets;
or

- d. a company controlled by any of the secured parties, authorised under applicable laws to carry out business in Malta.

12.3.15 Enemalta undertook to accept the performance of any of the obligations of ElectroGas Ltd under the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements obtained by or on behalf of HSBC Corporate Trustee Company (UK) Ltd. Moreover, such performance was to, to the extent performed in line with the conditions of the aforementioned Agreements, satisfy ElectroGas Ltd’s obligations under these Agreements.

12.3.16 The Direct Agreements further included provisions regarding the suspension of remedies and defined suspension and extended suspension periods, along with the motives for such extensions. During a suspension or extended suspension period, Enemalta could, where permitted, terminate the:

- a. Site Lease Deed;
- b. IA - on the service of notice of termination of the IA being effective, the Site Services Agreement and the Electricity Connection Agreement would be terminated; and
- c. Supply Agreements;

and choose to purchase the gas facilities and Delimara 4 before the GSA exit date and Delimara 4 subsequent to such date.

12.3.17 Enemalta was not to take any enforcement action if at the end of the suspension or extended suspension period the breach had been resolved, no longer continued or any related damages had been notified and paid. The Supply Agreements Direct Agreement specified other cases where Enemalta could not take any enforcement action with respect to the Supply Agreements. In this regard, Enemalta could not take enforcement action in cases where the IA allowed it to serve a termination notice with respect to the Project Agreements if an event of loss occurred and up to one month after the date that a remedial programme, remedial works and budget were agreed or determined, under certain conditions. These conditions were that ElectroGas Ltd had started implementing the remedial works agreed or determined as per the IA before:

- a. 30 days after Enemalta served a termination notice if the remedial works were agreed with Enemalta, and
- b. the end of the suspension or extended suspension period starting when Enemalta served a termination notice because of the conditions described above, if the remedial works were decided on by an expert.

Furthermore, for such time as Enemalta was prohibited from taking enforcement action in the latter cases, ElectroGas Ltd relinquished its right to terminate any Supply Agreement if an event

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of loss occurred and at any time up to one month after the remedial programme, remedial works and budget were agreed or determined.

12.3.18 The Direct Agreements also included provisions regarding outstanding obligations. In this respect, Enemalta was to supply HSBC Corporate Trustee Company (UK) Ltd with the details of all outstanding obligations within 45 days from the provision of a remedies notice. This notice, submitted by Enemalta, was to outline its intention to take enforcement action. Enemalta could provide to HSBC Corporate Trustee Company (UK) Ltd additional statements during any suspension period, extended suspension period, or step-in period:

- a. regarding ElectroGas Ltd failing to pay Enemalta any amount falling due under the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and any Supply Agreement; and
- b. regarding additional claims against ElectroGas Ltd in its favour under the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and any Supply Agreement.

12.3.19 Noted in the Direct Agreements was that at any time from the date of an enforcement notice and the period during which this was effective, or during a suspension or extended suspension period, HSBC Corporate Trustee Company (UK) Ltd could deliver a step-in notice to Enemalta, the form of which was included in the Direct Agreements. With respect to the Supply Agreements Direct Agreement, such date was to be:

- a. subsequent to three months following the start of the then current Delimara 4 Assessment Period, if ElectroGas Ltd had failed to maintain a Delimara 4 average availability of at least 85 per cent during such period (or was reasonably likely to fail to do so);
- b. prior to the GSA Exit Date, subsequent to three months following the start of the then current Gas Facilities Assessment Period, if ElectroGas Ltd had failed to maintain a gas facilities average availability equal to or higher than 90 per cent during such period (or was reasonably likely to fail to do so).

12.3.20 In this respect, the Direct Agreements included information with respect to the rights and obligations of the additional obligor. Also included was information relating to the additional obligor's release from the rights and obligations assumed. This was to be from the earlier of the step out date or:

- a. for the Site Lease Deed, the date after the publication of a public deed under the same terms and conditions of the Site Lease Deed between Enemalta and the substitute; and
- b. for the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements, the first business day after the date of delivery of a transfer certificate effecting novation, the form of which was stipulated in the respective Agreements.

12.3.21 The Direct Agreements also provided for the novation of the Site Lease Deed, the Site Services Agreement, the Electricity Connection Agreement and the Supply Agreements to a substitute. HSBC Corporate Trustee Company (UK) Ltd could inform Enemalta that it wished for a substitute to assume the rights, benefits, obligations and remedies of ElectroGas Ltd from the date of an enforcement notice and during the period within which such notice was effective, or during a suspension, extended suspension period or a step-in period. Enemalta was to decide whether to consent to such novation in writing. However, such consent was not to be unreasonably withheld or delayed. The Direct Agreements specified reasonable grounds for refusal and the procedure for disputes relating to such consent. Terms and conditions in relation to the novation procedure were also included. Further noted in the Supply Agreements Direct Agreement was that ElectroGas Ltd and Enemalta were to ensure that the Direct Agreements with the FSU Owner and the FSU Operator, dated 13 April 2015, were novated from ElectroGas Ltd to the substitute as from the first business day following the delivery of the transfer certificate to Enemalta.

12.3.22 Also provided in the Direct Agreements was that HSBC Corporate Trustee Company (UK) Ltd could assign or transfer its rights and obligations to a successor security trustee under the Finance Agreements without the approval of Enemalta and ElectroGas Ltd. However, the rights and obligations of Enemalta and ElectroGas Ltd under the Direct Agreements were not to be assigned without the prior written consent of HSBC Corporate Trustee Company (UK) Ltd.

12.3.23 Also noted was that the written consent of Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd was necessary for any amendments to the Direct Agreements. Furthermore, any waivers of any provision of the Direct Agreements were to be given in writing and signed by the party granting or consenting to them. In addition, the Direct Agreements stipulated that damages would not be an adequate remedy for a breach of the Direct Agreements by Enemalta, that such Direct Agreements were to be specifically enforceable and that all other legal and equitable remedies and reliefs were to be available.

12.3.24 The Direct Agreements included provisions with respect to the dispute resolution procedure in case of any dispute arising out of or in connection with the Direct Agreements between the parties and the procedure for the referral of disputes for arbitration. Furthermore, the Direct Agreements provided for the entry into:

- a. a new Site Lease Deed, a new Site Services Agreement, a new Electricity Connection Agreement and new Supply Agreements should the current ones be terminated due to any bankruptcy, insolvency or similar proceeding; and
- b. new direct agreements by Enemalta and ElectroGas Ltd, at the request of HSBC Corporate Trustee Company (UK) Ltd, with any new secured party or with any substitute or the agent or trustee of any such secured party.

12.3.25 The Site Lease Deed Direct Agreement and the Supply Agreements Direct Agreement featured a number of additional clauses. According to the Site Lease Deed Direct Agreement, Enemalta undertook to, where necessary, enter into a public deed with an additional obligor or a substitute to give effect to its terms and to undertake any reasonable action for this purpose. Noted in the Supply Agreements Direct Agreement was that Enemalta agreed that ElectroGas Ltd had complied with its obligations listed in paragraph 6.3.12 of this report and that it had no objections to the terms specified. Moreover, in the Supply Agreements Direct Agreement, Enemalta and ElectroGas Ltd agreed that the Open Cycle Energy Delivery Date had occurred on 5 April 2017.

Notice and Acknowledgement for Assignment of Warranties (EPC1 Contract)

12.3.26 On 14 December 2017, ElectroGas Ltd submitted correspondence to Siemens Aktiengesellschaft Österreich, copying in Enemalta. According to the submission, Enemalta and ElectroGas Ltd had entered into an IA on 14 April 2014, and ElectroGas Ltd and Siemens Aktiengesellschaft Österreich, as the EPC Contractor, had signed an EPC Contract on 15 December 2014 for the sale and installation of a combined cycle power plant at Delimara. Through this correspondence, ElectroGas Ltd gave notice to Siemens Aktiengesellschaft Österreich that, further to the terms of the IA, ElectroGas Ltd had undertaken to procure the assignment to Enemalta of the benefit of all warranties granted to it by Siemens Aktiengesellschaft Österreich, as the EPC Contractor, under the EPC Contract.

12.3.27 ElectroGas Ltd further confirmed its agreement with Enemalta that such assignment of rights was to take effect simultaneously with the transfer of the energy facilities to Enemalta, following which Enemalta was to provide written notification to Siemens Aktiengesellschaft Österreich that the transfer of the energy facilities had occurred under the terms of the IA. Irrespective of the date on which Enemalta gave notice, such assignment was to occur automatically on the transfer of the energy facilities to Enemalta. The terms of this assignment could not be revoked without the prior joint written consent of ElectroGas Ltd and Enemalta.

Notice and Acknowledgement for Assignment of Warranties (EPC2 Contract)

12.3.28 On 15 December 2017, ElectroGas Ltd submitted correspondence to J&P-AVAX S.A., copying in Enemalta. Reference was made to the IA entered into between Enemalta and ElectroGas Ltd on 14 April 2014, and to the EPC contract signed between Enemalta and J&P-AVAX S.A., as the EPC Contractor, for the engineering, procurement, construction, installation, testing and commissioning of a regasification facility at Delimara, dated 23 December 2014.

12.3.29 Further to the terms of the IA, ElectroGas Ltd undertook to procure the assignment to Enemalta of the benefit of all warranties granted to it by J&P-AVAX S.A., under the EPC contract, in the event of the termination of the IA. In agreement with Enemalta, such assignment of warranties was to take effect simultaneously with the transfer of the gas facilities to Enemalta. Following the transfer, Enemalta was to promptly provide J&P-AVAX S.A. with written notification that the

transfer had occurred under the terms of the IA, and confirm that Enemalta was to undertake the obligations and liabilities borne by ElectroGas Ltd to J&P-AVAX S.A. under the EPC contract.

12.3.30 Any timely and proper performance or payment effected by J&P-AVAX S.A. in respect of the assigned warranties under the EPC contract to the benefit of Enemalta were to discharge any corresponding obligations borne by the EPC contractor under the EPC contract. Moreover, the terms of this assignment could not be revoked without the prior joint written consent of ElectroGas Ltd and Enemalta.

Delimara Security Agreement

12.3.31 On 15 December 2017, a deed was entered into between Government, represented by the Minister for Tourism as duly authorised by a meeting of the Cabinet of Ministers held on 13 November 2017, Enemalta, the Lands Authority and ElectroGas Ltd. According to the deed:

- a. Government had, on 31 December 2012, granted the utile dominium of a number of properties to Enemalta Corporation on temporary emphyteusis;
- b. by virtue of the same deed Enemalta Corporation had, in turn, sold the time remaining of the utile dominium (defined as the First Properties) or granted the utile dominium of a number of immovable properties on temporary emphyteusis (defined as the Second Properties) to Vault Finance Ltd;
- c. again, by virtue of the deed dated 31 December 2012, Enemalta Corporation transferred the directum dominium of the properties in respect of which the utile dominium was granted on temporary basis, that is the Second Properties, to Government;
- d. moreover, through the 2012 deed, Vault Finance Ltd leased the First Properties and the Second Properties to Enemalta Corporation;
- e. Enemalta Corporation ceased to exist and all rights and obligations of the Corporation were transferred to Enemalta plc pursuant to the Enemalta (Transfer of Assets, Rights, Liabilities and Obligations) Act (Cap. 536);
- f. Enemalta had leased the premises to ElectroGas Ltd by virtue of the Site Lease Deed entered into on 16 December 2014;
- g. ElectroGas Ltd had installed and would be operating the ElectroGas plant and equipment on the leased premises, and ElectroGas Ltd required to grant security over its plant and equipment and, for this purpose, required clarity on the Parties' intentions relating to the nature of the ElectroGas plant and equipment;
- h. the Lands Authority granted the utile dominium of the area to ElectroGas Ltd; and

- i. the Parties agreed to exclude the ElectroGas plant and equipment from the effects of the Special Privilege competent to the Government and Enemalta in terms of the Civil Code (Cap. 16) and from the effects of the Special Hypothec.

12.3.32 Through the deed dated 15 December 2017, the Parties agreed that:

- a. the ElectroGas plant and equipment installed in the leased premises was not intended to remain permanently incorporated therewith and was considered as movable for all intents and purposes of the law, and was not deemed to become the property of the owner of the land;
- b. the Parties acknowledged that any or all of the ElectroGas plant and equipment could be subjected to any encumbrance, charge or other security interest in favour of the lenders of ElectroGas Ltd;
- c. without prejudice to the provisions in (a), Enemalta, Government and the Lands Authority, with the acceptance of ElectroGas Ltd, undertook not to enforce their rights pursuant to the Special Privilege to the extent that this affected the ElectroGas plant and equipment;
- d. Government and the Lands Authority, with the acceptance of Enemalta and ElectroGas Ltd, undertook not to enforce their rights arising from the special privilege registered in favour of Government, in each case in so far only as each of the special privilege and special hypothec might affect the ElectroGas plant and equipment, while leaving all other rights arising therefrom otherwise firm, valid and unimpaired on all the other property mentioned therein;
- e. Government and the Lands Authority gave their consent for the registration of the note of reference against the notes of hypothec/privilege in so far as required for the purpose of recording of the undertakings herein; and
- f. Government and the Lands Authority confirmed that they were aware of the sub-lease granted to ElectroGas Ltd through the Site Lease Deed.

Site Lease Addendum

12.3.33 On 15 December 2017, Enemalta and ElectroGas Ltd entered into an Addendum to the Site Lease Deed, wherein it was acknowledged that:

- a. the Parties had entered into a Site Lease Deed on 16 December 2014, whereby Enemalta granted by title of sub-lease to ElectroGas Ltd the leased premises as defined therein, required in connection with the development, construction and ongoing operation of Delimara 4, the re-gasification facilities at Delimara and the conversion, chartering and ongoing operation of the FSU;

- b. ElectroGas Ltd requested and Enemalta acceded to insert a new clause in the Deed whereby two new sites, Site E and Site F, were to be included in the definition of ‘leased premises’ as defined therein;
- c. in accordance with Clause 2.1.9 of the Site Lease Deed, which was deleted pursuant to this Addendum, ElectroGas Ltd notified Enemalta that the land reclamation work for the jetty was completed. In this respect, the Parties agreed that Enemalta was to procure that Government grant to ElectroGas Ltd the title to the said reclaimed land; and
- d. the Parties had agreed to replace the site plan drawing of that attached to the Deed as Schedule A, indicating the leased premises, in order to reflect these amendments.

12.3.34 The Parties agreed to amend the clauses of the Deed to replace the definition of ‘leased premises’ with a new definition to revise the meaning of Site A, Site B, Site C, Site D and Site E. Immediately after the definition of Site E, a new definition in respect of Site F was to be added. A change to the definition of ‘business’ was also made. In essence, this entailed the substitution of the reference to “delivery of Gas and Liquid Nitrogen Gas (LNG) vessels” with “delivery of Liquefied Natural Gas (LNG) vessels”.

12.3.35 Another amendment to the Site Lease Deed related to the grant of the leased premises. To this end, the use of Site E was to be changed from “Site E, once land reclamation is completed, for the sole purpose of constructing a jetty thereon” to “Site E for the sole purpose of constructing, installing, developing, operating or maintaining thereon the Company’s temporary waste storage unit from where the waste disposal contractor collects it to other services.” Immediately after this paragraph, a new subparagraph was to be added in respect of Site F, namely: “Site F for the sole purpose of constructing, installing, developing, operating or maintaining thereon the Company’s cooling water outfall chamber before connecting to Enemalta outfall chamber.” Moreover, reference to privileged and hypothecary rights burdening the leased premises were now to include “other hypothecary or privileged rights which may arise at law”.

12.3.36 With regard to the payment of rent, the parties agreed that rent due to Enemalta with respect to Site E and Site F was to become payable together with the rent for the remainder of the leased premises, and at the same rate per square metre payable for the remainder of the leased premises as increased by the HICP in accordance with the Deed, as from the signing of this Addendum. Moreover, the rights granted by Enemalta to ElectroGas Ltd to make use of lay down areas were terminated, except for areas that the latter might require during certain maintenance activities throughout the duration of the Deed. Accordingly, Enemalta was to undertake reasonable endeavours to make available areas for such purposes, against applicable charges, subject to availability and Enemalta’s own requirements.

12.3.37 In case of contradiction or conflict with any of the provisions, the provisions of the Addendum were to take precedence. Except as otherwise provided in the Addendum, all terms and conditions of the Deed were to remain unchanged.

The Government Deed

- 12.3.38** A Deed was entered into on 15 December 2017 between the Lands Authority and ElectroGas Ltd whereby the former, as the dominus, granted to the latter, as the emphyteuta, a portion of land (hereinafter referred to as the Area) at Delimara on temporary emphyteusis. The term of the Deed was established as a fixed period commencing on the publication of the Deed and expiring on 15 December 2036, unless terminated prematurely pursuant to the provisions of the Deed. Notwithstanding this provision, ElectroGas Ltd had the right to request that the term be extended for one further period of 12 years, subject to the same terms and conditions, which right was exercisable at any time by notice in writing to the Lands Authority prior to 12 months from expiry of the initial term.
- 12.3.39** The Area was a divided portion of land situated at Delimara, limits of Marsaxlokk, measuring approximately 3,840 square metres and comprised reclaimed land on which a jetty had been constructed. The reclamation and the construction of the jetty had been undertaken by ElectroGas Ltd. The Lands Authority made no warranties or representations regarding the condition of the Area and warranty of latent defects was expressly excluded by the Authority. Moreover, the Lands Authority was not required to make any alterations, improvements or repairs to the Area, nor undertake any maintenance at any time. According to the Deed, ElectroGas Ltd had been in possession of the Area since 16 December 2014.
- 12.3.40** In consideration of the emphyteutical grant pursuant to this Deed, ElectroGas Ltd was to pay an annual temporary ground rent of €11.91 per square metre, exclusive of any VAT that could be chargeable thereon. Ground rent was to be paid in four equal instalments quarterly in advance for each year of the term. The ground rent was to be increased by the cumulative increase in the HICP, on a cumulative basis, on 16 December of each year, with the first such increase due on 16 December 2017. Failure to pay any amount of ground rent within 30 days from the date of request for payment by the Lands Authority rendered ElectroGas Ltd liable to pay interest at the rate of 3 Month Euribor plus 3 per cent.
- 12.3.41** According to the Deed, save as could otherwise be allowed in writing by the Lands Authority, ElectroGas Ltd could use the site exclusively for the permitted use and for no other purpose. According to the Deed, permitted use meant the use of the Area for purposes related to the supply of natural gas, mooring and harbouring facilities for an LNG FSU, pipelines for the delivery of LNG, in each case related to the project agreed with Enemalta, and the supply of electricity and/or gas to Enemalta in each case in connection with the power plant project.
- 12.3.42** The Deed also provided for maintenance and repairs that ElectroGas Ltd was to undertake at its own risk, cost and expense. On the termination of the emphyteutical grant by expiration of time or on dissolution of the grant for any other reason in accordance with the Deed, ElectroGas Ltd was to relinquish and return the Area and any permanent improvements thereon without any right of compensation. In the event that all or part of the Area was destroyed, ElectroGas Ltd had the right, but not the obligation, to restore, repair and rebuild the Area. Moreover, pursuant

to the Deed, ElectroGas Ltd could execute permitted reconstruction and refurbishment works necessary for the operation and management of the permitted use.

12.3.43 Restrictions on the transfer of the utile dominium of the Area or any part thereof were contemplated in the Deed, as was the grant of the Area in whole or in part by way of sub-emphyteusis. The Deed was to terminate with immediate effect on fifteen days from a written notice by the Lands Authority on the occurrence of an emphyteuta event of default that remained unremedied, or on the expiry of the term save as otherwise agreed between the parties. Emphyteuta events of default were defined as an event of insolvency in relation to the emphyteuta, abandonment, failure by the emphyteuta to pay ground rent, material breach of any of the emphyteutical obligations and/or the assignment or transfer by the emphyteuta of its rights or obligations in breach of the Deed. On the termination of the Deed or on the expiry of the term, ElectroGas Ltd was to surrender the Area to the dominus, with vacant possession, free and unencumbered, subject to fair wear and tear. The emphyteuta was liable to pay a penalty to the dominus of €45 per square metre per annum for each week or part thereof during which the emphyteuta remained in unlawful possession of the Area.

12.3.44 Other provisions in the Deed related to access rights that were to be afforded to the Lands Authority. The Deed also provided for compliance with law and other obligations, health and safety considerations, insurance, as well as liability and indemnity. Other conditions in the Deed related to the occurrence of a force majeure, waivers and cumulative remedies, third party rights and the dispute resolution procedure that was to be adhered to should any controversy or disagreement arise in the performance, interpretation or application of the Deed.

The Government Deed Direct Agreement

12.3.45 The Government, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd, as the security trustee, entered into the Government Deed Direct Agreement on 15 December 2017. Therein it was acknowledged that ElectroGas Ltd had entered into an IA with Enemalta in respect of the design, procurement, construction, commissioning, operation and maintenance of the facilities, the purchase of LNG, the availability and supply of gas and energy to Enemalta, and the performance of certain ancillary obligations. ElectroGas Ltd and Enemalta had also entered into a Conversion Term Agreement dated 30 November 2017, which amended and restated the IA, and into a public deed of emphyteusis, dated on or about the date of this Agreement for the grant of the jetty area to ElectroGas Ltd under the terms and conditions specified in the Government Deed.

12.3.46 Prior to funding being made available to ElectroGas Ltd under the Finance Documents, it was necessary for ElectroGas Ltd to constitute a hypothec over the jetty area in favour of HSBC Corporate Trustee Company (UK) Ltd. In this regard, certain direct rights in respect of the Government Deed were to be granted to the security trustee on the terms of the Government Deed Direct Agreement. Acknowledged in this context was that ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd had entered into a public deed dated on or around the

date of this Agreement for the constitution of the afore-mentioned hypothec over the jetty area. The HSBC Corporate Trustee Company (UK) Ltd was to hold the benefit of this agreement for itself and as security trustee for the Secured Parties referred to in paragraph 12.3.7.

12.3.47 Pursuant to the Government Deed Direct Agreement, Government confirmed that it had not received any notice of assignment, or was aware of any interest of any third party in the rights of ElectroGas Ltd in respect of the Government Deed, or of any material breach thereof. In terms of the Agreement, Government undertook to deliver to the security trustee copies of all material notices and demands delivered to ElectroGas Ltd. Moreover, Government was to accept as valid any enforcement notice by the security trustee under the Government Deed to the extent that such notice or demand could have been properly made by ElectroGas Ltd under the terms of the Deed. Under the terms of the Government Deed Direct Agreement, Government was to notify HSBC Corporate Trustee Company (UK) Ltd of any material breach of the Government Deed.

12.3.48 If, at any time, the HSBC Corporate Trustee Company (UK) Ltd issued a notice to Government that an event of default had occurred and was continuing unremedied and unwaived pursuant to the Finance Documents, the security trustee was entitled to give enforcement notices and make demands with regard to all or any of the rights, powers, discretions, claims and remedies arising under the Government Deed. Government was to accept such notices and demands as valid. In the event of a conflict between notices received from ElectroGas Ltd and from the security trustee after the issuance of an enforcement notice, Government was to treat the communication from the security trustee as prevailing.

12.3.49 The Government and ElectroGas Ltd were to perform or comply with the relevant terms of the Government Deed. In the event that, as a result of a change in law after the date of the Agreement, a failure of the Government to comply with any decision set out in the decision of the EC in respect of the project dated 11 January 2017 or a judgment of the Courts of Malta, the Government Deed was held illegal, invalid, void, voidable or unenforceable by any party thereto, Government's obligations and liabilities pursuant to this provision were to be determined as if the Government Deed was legal, valid, binding and enforceable in accordance with its terms.

12.3.50 Under the terms of the Government Deed Direct Agreement, Government was authorised and instructed, as of the date of this Agreement, to procure that all payments due and payable, or which could become due or payable by Government to ElectroGas Ltd arising from the Government Deed, were to be made to the credit of the Proceeds Account indicated in this Agreement or such other bank account specified to Government by HSBC Corporate Trustee Company (UK) Ltd. Payments made by Government in accordance with this provision were to, to the extent of such payments, discharge Government from the corresponding payment obligation in the Government Deed.

12.3.51 The Government and ElectroGas Ltd acknowledged that, notwithstanding the constitution of the hypothec by the latter over the jetty area in favour of the security trustee, ElectroGas Ltd

was to remain at all times solely liable to Government for the performance of all the obligations and liabilities assumed by it under the Government Deed. Neither the security trustee nor any of the secured parties were to have any such obligation or liability, save if and to the extent novated. Without prejudice to this proviso, Government undertook to accept the performance of any of the obligations of ElectroGas Ltd under the Government Deed which was procured or on behalf of the security trustee, and that such performance was to, to the extent performed in accordance with the provisions of the Government Deed, satisfy the obligations of ElectroGas Ltd emanating therefrom.

12.3.52 With regard to the suspension of remedies, Government undertook that, until the earlier of the discharge date (that is, the date of which Government is notified by the security trustee that all the liabilities of ElectroGas Ltd to the secured parties were discharged in full) and the date of notice of the termination of the Project Agreements or the acquisition of the facilities by Enemalta in terms of the IA, it would not take any enforcement action until the expiry of:

- a. 75 days, that is the suspension period, after the later of (i) the date on which Government would, but for this clause, be entitled to take such enforcement action and (ii) the date on which a Remedies Notice specifying Government’s intention to take enforcement action is served, or deemed to be served on the security trustee; and
- b. any further period by which the suspension period is extended, that is the extended suspension period.

12.3.53 If, prior to the expiry of any suspension period or extended suspension period, an assumption date occurred in relation to a step-in notice, these suspension periods were to be extended until the date falling 30 days after the assumption date. On the other hand, if during a suspension period or an extended suspension period, a proposed novation notice was delivered to Government and Government stated its intention to withhold consent and this was deemed warranted, then the suspension period was to be extended until after the expiry of 30 days from such determination. If Government did not indicate its intention to withhold its consent, there was to be no extension to the suspension period or an extended suspension period.

12.3.54 Notwithstanding any other provisions in the Government Deed Direct Agreement, any suspension period or extended suspension period was to be deemed to have expired on the day falling 105 days after the commencement of the original suspension period. Nonetheless, if at any time during a suspension period or extended suspension period Enemalta gave notice to the security trustee and to ElectroGas Ltd that it intended to terminate the Project Agreements and acquire the facilities in accordance with the IA, the suspension period or the extended suspension period was to be deemed to have expired. The termination of the Government Deed was to be effective as of the date of such notice. Government was not to take any enforcement action in relation to any breach, default or circumstance if, at the end of the suspension period or the extended suspension period relating thereto, such circumstance no longer subsisted, had been remedied or any damages due and payable to Government resulting from the breach had been paid.

- 12.3.55 Within 45 days of the date of any Remedies Notice, Government was to submit to the security trustee details of all amounts payable to Government under the Government Deed outstanding on or before the date of the Remedies Notice. Government was also to submit all outstanding claims against ElectroGas Ltd pursuant to the Government Deed arising out of any breach or default of the Government Deed. If during any suspension period, extended suspension period or step-in period ElectroGas Ltd failed to pay Government any amount falling due under the Government Deed, Government could deliver to the security trustee additional statements in respect of such amounts or claims.
- 12.3.56 Pursuant to the Government Deed Direct Agreement, HSBC Corporate Trustee Company (UK) Ltd could, during an enforcement notice or during a suspension period or extended suspension period, deliver a step-in notice to Government as provided for in the Agreement. In the step-in notice to Government, the security trustee was to state that an additional obligor is to become a party to the Government deed, and identify who the obligor was. Provided that a public deed was entered into by Government and the additional obligor, the latter was to become a party to the Government Deed with all of the rights of ElectroGas Ltd thereunder, and was to be jointly and severally liable with ElectroGas Ltd for all its obligations thereunder after the assumption date. Nonetheless, the additional obligor could, at any given time, give Government notice of termination of its obligations under the Government Deed as and from the date indicated in the said notice, indicated as the step-out date. The additional obligor was to be released from all obligations and liabilities under the Government Deed, provided that such release was without prejudice to any accrued liabilities of the additional obligor as of the step-out date or the effective date, as applicable.
- 12.3.57 With regard to novation, at any time when an enforcement notice was in effect, or during a suspension period or extended suspension period, or during a step-in period, HSBC Corporate Trustee Company (UK) Ltd could give notice to Government that it wished for a substitute to assume the rights, benefits, obligations and remedies of ElectroGas Ltd under the Government Deed. A novation was only to be effective if Government consented to the novation in writing. Notwithstanding this proviso, the security trustee could assign or transfer its rights and obligations to a successor security trustee under the Finance Documents without the consent of Government and ElectroGas Ltd.
- 12.3.58 The Government Deed Direct Agreement stipulated other provisions with regard to the duration of the Agreement. In this regard, the Agreement was to remain in force until the discharge date, that is the date on which Government is notified by HSBC Corporate Trustee Company (UK) Ltd that all liabilities of ElectroGas Ltd to the secured parties have been discharged in full. The Agreement also provided for dispute resolution, the exercise of rights and remedies and amendments thereto.

12.4 Settlement of the €450,000,000 Bridge Loan Facility and the release of the Government Guarantee

- 12.4.1 As indicated in the preceding paragraphs, the Final Maturity Date, originally set for 28 May 2017, was extended to 29 December 2017. Aside from key project-related developments that took place in the interim, including the achievement of the Energy Delivery Date and the Phase 2 Gas Delivery Date, as well as the waivers and addenda essential in terms of Financial Closing, was the signing of the SSA, which allowed ElectroGas Ltd to secure long-term financing for the project. The SSA, which was duly scrutinised by the EC in terms of state aid, was signed by Government, Enemalta and ElectroGas Ltd on 15 December 2017. Through the long-term financing for the project secured by ElectroGas Ltd, the €450,000,000 Bridge Loan Facility was replaced and repaid. In effect, any amounts available under the Bridge Loan Facility that were not drawn by 29 December 2017 were no longer available after that date.
- 12.4.2 Following this, on 29 December 2017, BoV informed Government that the €450,000,000 Bridge Loan Facility had been repaid in full by ElectroGas Ltd. Repayment of the Bridge Loan Facility subsequently released Government from all its obligations under the Government Guarantee, thereby rendering the Accession Compensation Agreement no longer applicable. MFIN confirmed that no demands for payment were raised against Government, as Guarantor, under the Guarantee.

12.5 Analysis of Developments Leading to Financial Closing

- 12.5.1 The NAO noted that the concept of a conversion term was not considered in the RfP and was introduced through the IA after the selection of the preferred bidder. In this Office’s understanding this constituted a significant departure from the conditions established during the procurement phase of the project. In essence, through the Conversion Term Agreement, Enemalta would assume responsibility for the supply of gas for Delimara 4 as from August 2026. Assumption of this responsibility could be delayed through extensions of the LNG Supply Term or accelerated through a GSA Exit. The NAO is of the understanding that the conversion term was contingent on developments relating to the gas pipeline, which would allow Enemalta to supply the required gas to Delimara 4.
- 12.5.2 The divergence of the conversion term from that stipulated in the RfP assumes greater relevance when one considers that bidders were constrained to submit complete solutions for the supply of power and gas through the PPA and the GSA, respectively. The NAO is of the opinion that the conversion term supports the understanding that the PPA and GSA could have been treated separately. The Office contends that the separation of the PPA and the GSA would have contributed to better competition in bids submitted at the RfP stage, thereby allowing Enemalta to secure potential savings.
- 12.5.3 Other revisions effected through the Conversion Term Agreement that the NAO considered as comprising a material discrepancy in terms of that stated in the RfP or the original IA, included:

- a. the possibility afforded to ElectroGas Ltd to settle interest accrued on delay liquidated damages ten years after the Energy Delivery Date. This postponement was deemed anomalous by the NAO;
- b. the revision of the sale option equity value, established as €27,000,000 in particular circumstances in the original IA, yet amended to €35,000,000 under all circumstances in the Conversion Term Agreement; and
- c. the reduction of the rate payable by ElectroGas Ltd for demineralised water supplied by Enemalta, from €22/m³ cited in the RfP and original Site Services Agreement, to €14/m³ in the Conversion Term Agreement.

12.5.4 Shortly after the Conversion Term Agreement was entered into, Government, Enemalta and ElectroGas Ltd finalised the SSA. The SSA served as a safeguard in the event of any circumstance arising where Enemalta was unable to fulfil its obligations in terms of the Supply Agreements. Under such circumstances, Government, or its assignee, would step in instead of Enemalta, thereby ensuring continuity of supply of electrical power under the same terms and conditions of the Supply Agreements.

12.5.5 While the SSA did provide an element of security of supply, the NAO is of the understanding that the Agreement was fundamental for ElectroGas Ltd to secure financing. In fact, the SSA effectively replaced the Government Guarantee allowing ElectroGas Ltd to obtain long-term financing for the project. The NAO acknowledges the decision by the EC that the SSA did not constitute state aid. However, the Office maintains reservations regarding the manner by which the SSA was brought to the attention of prospective bidders. Despite the centrality of the SSA, no reference was made to it during the EoIC and in the RfP. The SSA was only mentioned in the bidders' conference and in clarifications issued late in the RfP stage, with limited reference made therein. Ultimately, the SSA was crucial in the achievement of financial closing, providing the lenders of ElectroGas Ltd with the required comfort to permanently finance the project.

12.5.6 With the Conversion Term Agreement and the SSA in place, the Parties sought to conclude pending matters essential in achieving financial closing. To this end, in the weeks leading to financial closing, various agreements, mainly relating to the Delimara site and the assignment of warranties, were concluded. In addition, a number of waivers were made by Enemalta. Of note in this respect was the waiver relating to excise taxes payable by ElectroGas Ltd in connection with the procurement, importation, supply and sale of LNG, gas and energy. Enemalta agreed to reimburse ElectroGas Ltd in respect of such taxes.

12.5.7 Finally, on 29 December 2017, BoV informed Government that the €450,000,000 Bridge Loan Facility had been repaid in full by ElectroGas Ltd. Repayment of the Bridge Loan Facility subsequently released Government from all its obligations under the Government Guarantee. These developments implied that all conditions necessary for financial closing were achieved.

12.6 Considerations on the Effect of the Security of Supply Agreement on the Fairness of the Tender Process

12.6.1 The NAO reviewed the project as initially proposed in the EoIC and the RfP, and the bearing that the introduction of the SSA had on the tender process. Hereunder is a timeline of salient developments in this respect (Figure 47 refers).

Figure 47: Timeline of the SSA

Date	Details
11 April 2013	Enemalta issued an EoIC for the supply and delivery of natural gas under the terms of a long-term GSA and the supply and delivery of electricity under the terms of a long-term PPA. No reference to an SSA or a possible government guarantee was made.
30 April 2013	A candidate submitted a query related to the provision of a sovereign guarantee, enquiring whether it was possible to obtain a guarantee from Government with regard to the PPA.
2 May 2013	During a meeting of the Programme Review Board it was decided that Enemalta was to discuss the provision of a government guarantee with the Attorney General.
4 May 2013	In its response to the query of 30 April 2013, Enemalta stated that the issue was currently under review and would be clarified at the RfP stage.
12 June 2013	The Programme Review Board agreed that discussions with MFIN with regard to a government guarantee were to be undertaken in view of the significant impact such guarantee would have on the financial standing of Malta.
6 July 2013	An RfP was launched, whereby EoIC shortlisted candidates were invited to submit detailed technical and financial proposals. No reference to an SSA or a possible government guarantee was made.
19 July 2013	The Programme Review Board decided that the government guarantee instruments were to be presented to MFIN for its consideration. More importantly, the Board agreed that no reference was to be made to the government guarantee in the RfP.
26 July 2013	In a request for clarification, the Endeavor Consortium enquired whether Government would provide a guarantee for Enemalta to enhance credit rating and facilitate project financing. In addition, the Consortium sought clarification as to whether it was possible to obtain a sovereign guarantee for the PPA and the GSA from Government.
31 July 2013	The Programme Review Board discussed the government guarantee, with relevant implications with respect to state aid brought to the fore. According to the Board, this process was expected to take approximately six months. The Board noted that the most favourable option was to have such a guarantee on the basis of security, that if Enemalta was not in a position to pay its dues, Government would purchase the electricity on the basis that this was in the national interest.
2 August 2013	A bidders' conference was held wherein the concept of security in terms of the operation of the facilities and the generation of revenue was referred to.

30 August 2013	During a meeting of the Programme Review Board, reference was made to the bidders' request for a guarantee for payment by Enemalta. The Board proposed a security of supply agreement for the term of the contract, which would guarantee payment by Government should Enemalta default on payment. In addition, the Board proposed a letter of credit covering the residual value of the plant, addressing the obligation to purchase the plant in the event of termination.
5 September 2013	Reference to the SSA was made through an amended draft IA circulated by Enemalta to bidders. However, the SSA itself was not submitted to bidders.
9 September 2013	Through a request for clarification, the Soffimat Consortium enquired when a copy of the SSA was to be provided.
12 September 2013	In reply, Enemalta stated that this Agreement was to be executed between the SPC and Government, and that the Agreement would provide that Enemalta's obligation to purchase electricity and gas would be assumed by Government in specific circumstances.
10 October 2013	The RfP Evaluation Committee concluded that the ElectroGas Consortium was to be considered as the Preferred Bidder, with the Endeavor Consortium as the Reserve Bidder.
Mid-2014	According to information obtained from the Ministry for Finance, during mid-2014, it became apparent that for ElectroGas Ltd to secure funding on a non-recourse project financing basis, the SSA was to be in place. However, Government decided that the SSA was not to be executed prior to clearance from the EC regarding whether the SSA constituted state aid. In this context, discussions were held regarding the possible provision of a Government Guarantee that was to allow the MLAs to provide ElectroGas Ltd with an Interim Bridge Facility.
3 September 2014	BoV notified MFIN that it, together with BNP Paribas Fortis NV/SA, HSBC Bank Malta plc and KfW IPEX-Bank GmbH, was considering advancing to ElectroGas Ltd a bridging facility of €160,000,000 for the construction of the new gas power station. However, the terms of sanction required that the facility be secured by a guarantee to be issued by Government for up to 80 per cent of the amount, or €128,000,000, while the remaining 20 per cent was to be contributed by ElectroGas Ltd. This arrangement was deemed to represent an equitable allocation of risk by BoV.
September – December 2014	The terms of negotiation were revised, with BoV agreeing to advance an interim bridge loan of €110,000,000 to ElectroGas Ltd in order to finance the initial project costs, including deposits owed under the EPC contracts.
9 December 2014	Cabinet authorised MFIN to provide the necessary guarantees and to appear on behalf of, and represent, Government on the documents relating to such guarantees and bridge loans as required for the project.
18 December 2014	ElectroGas Ltd entered into a €110,000,000 Interim Bridge Loan Facility Agreement with BoV to finance the project.
18 December 2014	MFIN sought clearance from the SAMB for the issue of the government guarantee in respect of 80 per cent of the €110,000,000 bridge loan, that is, €88,000,000. Indicated in this correspondence was that Government was to charge a margin of 50 basis points in respect of the guarantee.

19 December 2014	Clearance for the government guarantee was provided by the SAMB.
19 December 2014	A government guarantee was entered into between Government and BoV, wherein the government supported amount was set at €88,000,000, equal to 80 per cent of all principal, interest, fees and other expenses pursuant to the Interim Bridge Loan Facility Agreement, and capped at €132,000,000.
28 May 2015	Due to additional payment obligations, the Interim Bridge Loan Facility was extended from €110,000,000 to €137,500,000.
28 May 2015	A corresponding increase of €22,000,000 to the government guarantee was effected.
28 July 2015	ElectroGas Ltd, various banks and Government entered into a €450,000,000 Bridge Loan Facility Agreement. Under this agreement, ElectroGas Ltd, as borrower, was to utilise the facility made available by the banks, whereas Government fulfilled the role of government guarantor.
31 July 2015	Government, BoV and ElectroGas Ltd entered into another government guarantee. The government supported amount was set at €360,000,000, while the maximum liability of Government under this guarantee was capped at €432,000,000.
28 June 2016	Government submitted plans relating to the Delimara Gas and Power Energy Plant to the EC for assessment in terms of EU state aid rules.
11 January 2017	A decision on whether the Transaction Agreements and the SSA were compliant with EU state aid rules was issued by the EC. The EC approved support, in the form of payments from Enemalta to ElectroGas Ltd for the Delimara Gas and Power Energy Project. The EC concluded that this support, covering the provision of energy to Enemalta and compensating ElectroGas Ltd for the additional cost in the fulfilment of the PSO, would not give rise to overcompensation for the provision of the services.
13 November 2017	Cabinet approved that the government guarantee be extended until 31 December 2017, subject to SAMB approval.
13 November 2017	Cabinet resolved that the Minister for Tourism was authorised to enter into the SSA, among other agreements.
15 December 2017	The SSA was entered into by Government, Enemalta and ElectroGas Ltd whereby, in case of termination of the Supply Agreements, Government would ensure continuity of supply of electrical power by assuming Enemalta's obligations to purchase electricity and gas.
29 December 2017	The government guarantee was released following the settlement of the €450,000,000 Bridge Loan Facility by ElectroGas Ltd.

12.6.2 The NAO established that no reference was made to a possible security of supply agreement or any other form of state guarantee by Enemalta in the EoIC and the RfP. Although a candidate enquired on this matter through a request for clarification during the EoIC process and Enemalta indicated that this would be addressed in the RfP, this was not the case. While it was evident that discussions were held by the Programme Review Board relating to the possible issuance of a government guarantee, during the Board meeting of 19 July 2013, with the RfP already published, it was decided that no reference was to be made to a possible government guarantee.

- 12.6.3 Notwithstanding this, a request for clarification submitted by the Endeavor Consortium triggered further discussions within the Programme Review Board, with a guarantee on the basis of security considered as the most favourable option. In effect, such a guarantee ensured that if Enemalta was not in a position to pay its dues, Government would purchase the electricity on the basis that this was in the national interest. This understanding assumed a more definite form during the Programme Review Board meeting of 30 August 2013, wherein the Board proposed a security of supply agreement for the term of the contract, which would guarantee payment by Government should Enemalta default on payment.
- 12.6.4 Although discussions regarding security of supply had been ongoing for some months, the NAO established that first reference to the SSA by Enemalta brought to the attention of the bidders was made during the bidders' conference, wherein the concept of security in terms of the operation of the facilities and the generation of revenue was outlined. More specific reference to this was made through an amended draft IA circulated to bidders on 5 September 2013; however, it must be noted that the SSA was not made available to the bidders, but merely referred to in the draft IA. In fact, the Soffimat Consortium specifically requested a copy of the SSA; yet, Enemalta stated that this Agreement was to be executed between the SPC and Government, and that the Agreement would provide that Enemalta's obligation to purchase electricity and gas would be assumed by Government in specific circumstances. This clarification was issued by Enemalta on 12 September 2013, a few days before the bid submission deadline.
- 12.6.5 The NAO is of the understanding that the SSA provided assurance that Government would step in instead of Enemalta in circumstances where the latter could not honour its obligations. This substantial change, introduced at such a late stage in the RfP process, was deemed by the Office as a significant shortcoming in ensuring the required fairness of the procurement process. While the NAO acknowledges that all bidders were informed of such a development, the nature of the change and its proximity to the bid submission deadline were, in the Office's opinion, inappropriately managed, for this substantially altered the contractual relationship between the selected bidder and Enemalta.
- 12.6.6 The RfP was concluded by October 2013, with the ElectroGas Consortium identified as the preferred bidder; however, by mid-2014, it became apparent that for ElectroGas Ltd to secure funding on a non-recourse project financing basis, the SSA was to be in place. It was in this context that Government decided that the SSA was not to be executed prior to clearance from the EC regarding whether the SSA constituted state aid. In order for the project to proceed regardless, discussions with respect to the possible provision of a government guarantee that would allow the lending agencies to provide finance to ElectroGas Ltd were initiated. In fact, in December 2014, Government provided a guarantee of €88,000,000, which amount was increased by €22,000,000 in May 2015. Subsequently, in July 2015, the Government Guarantee was again revised to €360,000,000.

- 12.6.7 According to Enemalta, the project was always intended to be backed by an SSA and the Government Guarantee was only given as an interim measure, as a temporary substitute for the SSA, because Government was of the view that it would not be in the public interest for the project to be delayed pending the state aid clearance process. Moreover, Enemalta asserted that ElectroGas Ltd, being the beneficiary of the Government Guarantee, paid guarantee fees at market rates. MFIN elaborated in this respect, noting that Government took all available security measures to ensure that, in the event that any amounts were expended under the Guarantee, Government could get the full benefit of such amounts through the acquisition of ElectroGas Ltd, pursuant to the Share Call Option Agreement.
- 12.6.8 Although the Government Guarantee was not called and was released in December 2017, when ElectroGas Ltd repaid the bridge loan facility and secured long-term financing, possible and contingent on the execution of the SSA among others, the NAO maintains serious reservations regarding the risk that Government was exposed to when the guarantees were in effect. The Office is of the opinion that such a situation could have been avoided through appropriate planning, with referral to the EC undertaken at the earliest, possibly prior to the issuance of the EoIC and the RfP. It is in view of the serious repercussions that could have materialised had the guarantees been called that the NAO advocates that any measure that could have mitigated the issuance of the Government Guarantees and the duration within which they were in effect should have been considered.

Chapter 12

Chapter 13

The Malta-Sicily Interconnector Agreements

13.0.1 As part of its review, the NAO was requested to establish whether the rate at which Government and/or Enemalta agreed to purchase electricity from ElectroGas Ltd was more favourable than that at which Enemalta procured electricity through the interconnector. To this end, the NAO reviewed the contractual framework that regulated the purchase of electricity by Enemalta through the Malta-Sicily interconnector. These comprised the Framework Agreement and other ancillary agreements, including that related to the commercial treatment as well as that governing the operating rules of the connection.

13.1 Framework and Ancillary Agreements

13.1.1 Enel Trade S.p.A and Enemalta entered into the Framework Agreement on 29 January 2015. The Agreement regulated the sale and delivery of electricity to Enemalta and the provision of the services, that is, the scheduling and trading of electricity through the Malta-Sicily Interconnector by Enel Trade S.p.A. Furthermore, Enel Trade S.p.A and Enemalta entered into this Agreement with the understanding to sell, buy and hedge all electricity related to the interconnector. The Framework Agreement was to terminate after five years, that is, on 31 December 2019; however, Enemalta retained the right to terminate the Agreement after three years.

13.1.2 Stipulated in the Framework Agreement was the procedure for Enel Trade SpA to provide forward products to Enemalta. The Agreement outlined a pricing structure to be utilised in this respect, valid until 31 May 2015 (Figures 48, 49 and 50 refer). Included were fees for commodity purchases for 2015 and 2016, forward product volume fees and other forward product fees. The Agreement also regulated Enemalta's access to electricity markets, including the day-ahead and intraday spot markets through the Italian Electricity Power Exchange.

Figure 48: Commodity purchase maximum quantity and fees for 2015-2016

Product	Maximum quantity		Commodity price	Sicilian zonal charge	Transaction charge
		(MW)		(€/MWh)	(€/MWh)
Baseload (relevant period 1-24 Mon-Sun)	Mar-15	70	Fixed at best Italian Derivatives Energy Exchange (IDEX) market offer at the time of the request. If a product was not listed on IDEX, the TFS brokerage platform was to be used as reference.	20.40	0.005
	Q2-15	70		32.50	
	Q3-15	120		24.75	
	Q4-15	120		21.40	
	Cal-16	15		7.40	
	Q1-16	15		4.30	
Peakload (relevant period 9-20 Mon-Fri)	Mar-15	20		20.80	
	Q2-15	20		31.15	
	Q3-15	70		22.95	
	Q4-15	70		22.10	

Figure 49: Forward product volume fees

Forward period	Product clip size	Volume fee (€/MWh)
Days	10	0.15
Weekend	10	0.15
Weeks	10	0.15
Months +1	10	0.10
Months +2	10	0.15
Months +3	10	0.20
Quarter +1	10	0.10
Quarter +2	10	0.15
Quarter +3	10	0.20
Calendar +1	10	0.10
Calendar +2	10	0.15
Calendar +3	10	0.20

- Notes:
- 1. Product clip size refers to the maximum number of contracts one is permitted to trade.
 - 2. The price level applied to forwards product transactions was to be:
 - a. If buying, fixed at the sum of the best IDEX market offer and the volume fee;
 - b. If selling, fixed by deducting the volume fee from the best IDEX market bid;
 - c. The real time price as officially quoted at the time of request; and
 - d. Referenced to the TFS brokerage platform if a product was not listed on IDEX.

13.1.3 The Framework Agreement also regulated matters relating to invoicing by Enel Trade S.p.A and the payment thereof by Enemalta. It was noted that if Enemalta failed to abide by the specified timeframe, an interest rate, defined as one-month Euribor interest rate on the due date plus five per cent per annum, would be applicable.

Figure 50: Other forward product fees

Item	Period	Product clip size	Commodity price (€/MWh)
Sicilian zonal charge hedging	Daily CCT	On request	Fixed price
	Weekend		
	Weekly CCT		
	Monthly CCT		
	Quarterly CCT		
	Yearly CCT		
Power options	Monthly		Fixed strike price
	Quarterly		
	Yearly		

Notes:

1. CCT refers to the fee for assignment of rights of use of transmission capacity.
2. The Framework Agreement provided that in any case and for all other import and export circumstances, ENEL Trade S.p.A could provide a fixed price on request based on the relevant and current market conditions. If applicable for the cable (according to actual rules only in case of export from Malta to Sicily), Enel Trade S.p.A could provide direct access to monthly and yearly Terna auctions for the allocation of coverage against the risk of volatility in electricity transmission (CCC) through a volume market access fee of €0.1/MWh.

13.1.4 Further cited in the Framework Agreement were provisions with respect to events of default and its potential termination in this respect. The assignment of rights and/or obligations was forbidden except with the prior written consent of the other party, unless provided for in ancillary agreements, which are expounded on below. The Agreement also provided for other matters and for circumstances that could arise in its execution. Among others, the Agreement outlined the terms and conditions to be adhered to in the event of a force majeure and during arbitration proceedings.

13.1.5 Appended to the Framework Agreement were three other ancillary agreements, entered into by Enel Trade S.p.A and Enemalta on 29 January 2015, regulating other aspects of their contractual relationship:

- a. the European Federation of Energy Traders General Agreement on the delivery and acceptance of electricity and/or the selling of electricity (version 2.1(a) dated 21 September 2008) with a number of customisations specified in an election sheet to the Agreement – regulating, among others, matters such as options, floating contract prices, remedies for failure to deliver and accept, as well as invoicing and payments;
- b. the International Swaps and Derivatives Association 2002 Master Agreement for derivatives hedging transactions with a number of customisations specified in a schedule to the Agreement – regulating the trading terms between the parties for one or several derivative transactions, such as the contractual currency, payment netting, taxation, and termination; and

- c. a Service Agreement, in force for five years unless terminated earlier in line with the provisions of the Service Agreement itself and/or the Framework Agreement, regulating the scheduling of electricity and the services necessary for access to Italian and European power markets, including the Italian Spot Market, the Intraday Market and the CCC Market, to be provided by Enel Trade S.p.A to Enemalta.

13.1.6 The fees payable by Enemalta relating to the Agreement were:

- a. a spot product charge to be invoiced and paid according to the contractual relationships with the market system operator Gestore dei Mercati Energetici (GME) and the transmission system operator, Terna;
- b. a daily nomination charge to be invoiced and paid monthly; and
- c. an operational service fee to be invoiced and paid at the end of the relevant year – operational services included back office operations, risk management support, market analysis, trading, and reserve and market support.

Figure 51 provides the applicable charges outlined in the Service Agreement.

Figure 51: Service Agreement charges

Spot product service	Volume fee (€/MWh)
Day ahead	0.2 (indicative)
Intraday	0.2 (indicative)
Daily nomination details	Volume fee (€/MWh)
Contractual	0.1
Physical	0.1
Operational services	Monthly fee (€000s)
If total volumes nominated < 100MW Cal equivalent	40
If total volumes nominated > 100MW Cal equivalent	30
If total volumes nominated > 150MW Cal equivalent	20

13.2 Agreement for the Commercial Treatment of the Interconnector between Italy and Malta

- 13.2.1 Terna S.p.A and Enemalta entered into the Agreement for the Commercial Treatment of the interconnection line between Italy and Malta on 18 March 2015, which Agreement was to be effective throughout the operating period of the interconnector. It was acknowledged that Enemalta had constructed and fully owned the interconnector, and could use its interconnection capacity according to the terms of this Agreement, directly or through a third party designated by it. Moreover, specified in the Agreement was that consideration had been given to the following regulations:

- a. the 2009/72/EC Directive concerning common rules for the internal market in electricity;

- b. the Code for transmission, dispatching, developing and security of the grid applied in relations between Terna S.p.A and grid users from 1 November 2005, that is, the Italian Grid Code;
- c. the Operating Rules defining the modalities and responsibilities for the technical operation and maintenance of the interconnector signed by the parties; and
- d. for the initial six months subsequent to the start of the interconnector's commercial operation, designated in the Agreement as the interim period, the Deliberation n.111/06 of the Italian electricity regulator Autorità per l'Energia Elettrica il Gas e il Sistema Idrico³²(AEEGSI). This deliberation was titled, 'Condizioni per l'erogazione del pubblico servizio di dispacciamento dell'energia elettrica sul territorio nazionale e per l'approvvigionamento delle relative risorse su base di merito economico, ai sensi degli articoli 3 e 5 del decreto legislativo 16 marzo 1999, n. 79'.³³ This deliberation established dispatching rules for electricity borders with respect to which no control over planned exchanges was implemented. This information was provided by AEEGSI to Terna S.p.A in a letter dated 17 February 2015, in which AEEGSI also outlined that it intended to modify the Italian regulation on the basis of the specific characteristics of the interconnector. The Agreement stipulated that should AEEGSI revise the regulation regime applicable to the interconnector, Terna S.p.A and Enemalta were to modify this Agreement accordingly.

13.2.2 The Agreement for the Commercial Treatment of the interconnection line between Italy and Malta included provisions relating to the assessment of the net transfer capacity between Italy and Malta. This capacity was defined as the maximum scheduled energy exchange between Italy and Malta compatible with the security of the power system, accounting for technical uncertainties on future network conditions. In turn, the security of the power system referred to the interconnected grids and operating conditions conforming to the N-1 security criterion and the adequacy of the reserve margins as outlined in the Italian Grid Code. Provisions relating to a decrease in net transfer capacity because of deficiencies in the security of the power system or due to a force majeure were also outlined, with the procedure and timelines for the reduction of the yearly, weekly, day ahead and intraday net transfer capacity indicated. Further provisions were also applicable in relation to possible reductions, due to emergencies, made to the scheduled energy exchange program between Italy and Malta . The Agreement specified that in all cases of decreases in the net transfer capacity and in the scheduled energy exchange program, no compensation was to be paid to Enemalta and/or the third party utilising the interconnection capacity.

13.2.3 However, provisions were made with respect to a breach by a party of any obligations stipulated in the Agreement. In such a case, the other party could claim compensation for all losses and damages that could be considered as direct damage, foreseeable in the framework

³² Authority for Electricity, Gas and the Water System

³³ Conditions for the provision of the public service of dispatching electricity on national territory and for the procurement of the relative resources on the basis of economic merit, pursuant to articles 3 and 5 of the legislative decree 16 March 1999, n. 79.

of the Agreement, arising from the carrying out of the obligations stipulated in the Agreement and determined with intentional default or gross negligence. The parties were not to be held liable for any incidental, indirect or subsequent damages. Furthermore, Enemalta was liable towards Terna S.p.A with respect to direct damages caused by gross negligence or intentional default related to the commercial treatment of the interconnector by the third party utilising the interconnection capacity.

13.2.4 Also stipulated in the Agreement were provisions regulating the commercial treatment of the interconnection capacity during the interim period, including the sale and purchase of energy by the party utilising the interconnection capacity. Enemalta, or the third party utilising the said capacity, was to sign an injection dispatching contract for the usage of capacity in the direction from Malta to Italy and a withdrawal dispatching contract for the usage of capacity in the opposite direction. Thereafter, the party utilising the interconnection capacity would be the holder of a virtual consumption unit and a virtual production unit in the Malta virtual market zone. The virtual consumption and production units entitled the holder to buy or sell, respectively, energy in the Italian market through the Day-Ahead Energy Market (MGP) and the Intraday Energy Market (MI) managed by the GME, the Italian market operator. The maximum quantity that could be specified in the buying/selling offers was the net transfer capacity. Furthermore, the schedule resulting after the energy market was to be settled at the Malta zonal price. The differences between the schedule resulting from the energy markets and the energy metered at the terminal of the interconnection cable were to be settled at the Malta zonal price of the MGP.

13.3 Regolamento di Esercizio del Collegamento tra la Rete Elettrica Maltese di Enemalta e la Rete di Trasmissione Nazionale Italiana di Terna

13.3.1 The agreement Regolamento di Esercizio del Collegamento tra la Rete Elettrica Maltese di Enemalta e la Rete di Trasmissione Nazionale Italiana di Terna (Operating Rules of the Connection between the Maltese Power Grid of Enemalta and Terna's Italian Network) was entered into between Terna Rete Italia S.p.A and Enemalta on 20 March 2015. The Agreement regulated the connection, in submarine cable and terrestrial alternating current circuits, between the electrical system of Terna Rete Italia S.p.A. and that of Enemalta, with connection points at terminal stations in Ragusa and Magħtab, respectively. The interconnector, 118.75 kilometres in length, has a nominal capacity of 250 MVA. The Agreement set out the interface protocol that was to be adhered to, defined the modalities and responsibilities for the technical operation and maintenance of the interconnector. These provisions applied to the then plant configuration; in fact, any future enlargement would necessitate revisions to the Agreement. The stipulated procedures were to be valid from the date of the Agreement, sanctioned with the first parallel act of the connection.

13.3.2 The Agreement laid out the technical details of how electricity was to be exchanged between the Maltese and Italian power markets. Noted in the preamble were details of the two contracting parties, as well as specifications of the interconnector, wholly owned by Enemalta and having

as a connection point the RTN station of Ragusa, acquired by Enemalta through a concession agreement signed on 16 April 2014. An outline of the characteristics of the Maltese electrical system was given, with reference to the Marsa and Delimara power plants, which were at the time in operation.

13.3.3 Delineated in the Agreement were details of the connection, the track and the characteristics of the two terminal stations, the energy delivery points, the specifications of the earthing system, as well as those of the cable line and the shunt reactors. Electrical power, voltage and frequency were to be within the limits set by the relevant network code. The maximum active power that could be exchanged indefinitely by the Sicilian electricity system to the Maltese system, that is, the net transfer capacity, was 200 MW. Under temporary overload conditions, the connection was able to pass an active power of up to 340 MW for a maximum time of one hour. The Agreement also specified the operational considerations in emergency conditions or in case of failure in the infrastructure. Other provisions in the Agreement related to the management of power transits, access to the facilities, maintenance schedules, link controls and measurement.

13.4 Comparison of Rates between the Interconnector and Delimara 4

13.4.1 In its review, the NAO was requested to establish whether the rate at which Enemalta purchased electricity from ElectroGas Ltd was more favourable than that procured through the interconnector. To this end, the period April 2017 to June 2018 was reviewed. Although Enemalta provided this Office with invoices and payment-related documentation corresponding to the period April 2017 to April 2018, no information was made available in respect of May and June 2018. In order to address this gap, the NAO referred to the website of GME, which operates power, gas and environmental markets. On the power market platform operated by GME, producers and purchasers sell and buy wholesale electricity. Enemalta informed the NAO that purchases of electricity through the interconnector were effected through a day ahead auction market, the MGP, and the intraday auction market, the MI. It was in this respect that the NAO extracted information relating to purchases effected by Enemalta, as this allowed the Office to determine hourly unit consumption and rates charged for the period under review.

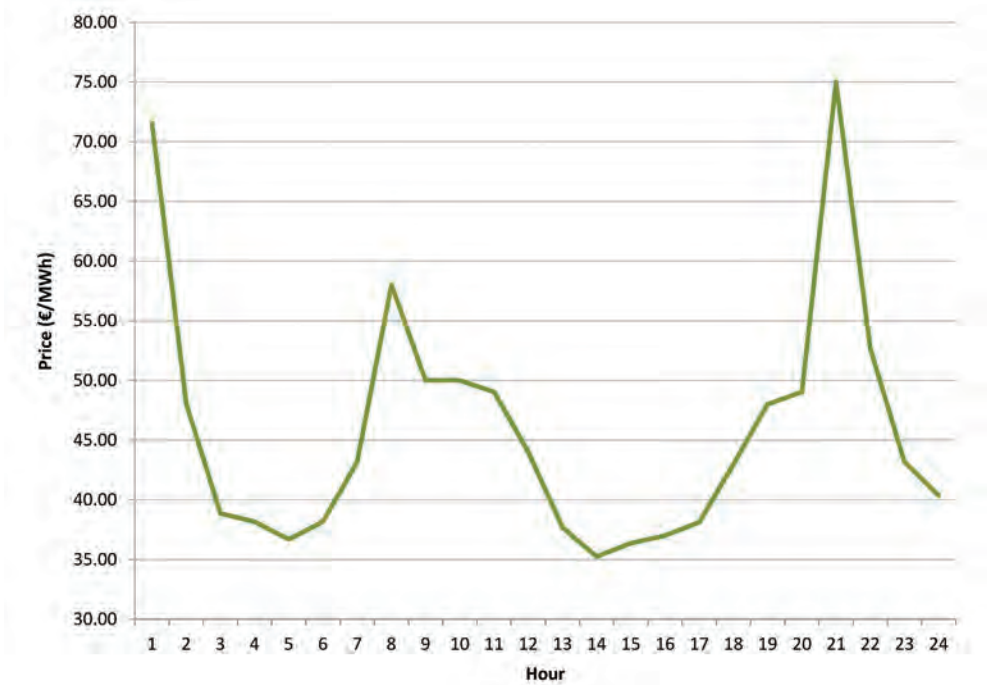
13.4.2 Based on the information obtained through the MGP, the NAO established that Enemalta procured 906,455MWh of electricity from the interconnector between April 2017 and June 2018 (Figure 52 refers). The cost of electricity purchased in this regard amounted to €55,764,845, which implied an average rate of €61.52/MWh. When adjusted for scheduling fees, charged by Enel at an average of €0.20/MWh, the average rate for electricity procured through the interconnector by Enemalta was €61.72/MWh.

Figure 52: Rate for electricity procured through the Interconnector – MGP, April 2017 – June 2018

Period	Units (MWh)	Cost (€)	Rate (€/MWh)	Adjusted Rate (€/MWh)
April 2017	68,128	3,890,578	57.11	57.31
May 2017	88,858	5,259,971	59.20	59.40
June 2017	62,722	3,839,931	61.22	61.42
July 2017	81,025	5,415,336	66.84	67.04
August 2017	64,865	4,703,442	72.51	72.71
September 2017	10,891	676,316	62.10	62.30
October 2017	30,157	2,192,445	72.70	72.90
November 2017	87,475	5,137,884	58.74	58.94
December 2017	54,286	3,443,481	63.43	63.63
January 2018	89,284	5,575,289	62.44	62.64
February 2018	37,851	2,410,238	63.68	63.88
March 2018	77,919	4,399,570	56.46	56.66
April 2018	81,806	4,385,227	53.61	53.81
May 2018	26,103	1,749,250	67.00	67.20
June 2018	45,085	2,685,887	59.57	59.77
Total	906,455	55,764,845	61.52	61.72

13.4.3 Evident was that the cost of electricity, as procured by Enemalta, varied considerably, with an average adjusted rate of €53.81 recorded in April 2018 and a rate of €72.90 in October 2017. In effect, the price of electricity sourced through the interconnector and purchased on the MGP was set a day ahead and specified on an hour-by-hour basis. Prices varied substantially by hour, ranging from €196/MWh registered at 7pm on 24 January 2018 to multiple instances when the rate was less than €20/MWh. By means of example, Figure 53 presents the volatility in price registered on 1 April 2017, the first day of the period under review.

Figure 53: MGP market price by hour, 1 April 2017



13.4.4 Aside from purchases effected through the MGP, Enemalta also procured electricity through the MI. Purchases effected in this respect were infrequent and, according to Enemalta, contingent on the occasional immediate demand that arose. Between April 2017 and June 2018, Enemalta purchased 25,384MWh of electricity through the interconnector on the MI, at an aggregate cost of €1,593,268 (Figure 54 refers). This implied an average rate of €62.77/MWh, which when considering the scheduling fees due, resulted in an adjusted average rate of €62.97/MWh.

Figure 54: Rate for electricity procured through the Interconnector – MI, April 2017 – June 2018

Period	Units (MWh)	Cost (€)	Rate (€/MWh)	Adjusted Rate (€/MWh)
April 2017	0	0	0	0
May 2017	0	0	0	0
June 2017	0	0	0	0
July 2017	0	0	0	0
August 2017	2,101	123,393	58.73	58.93
September 2017	0	0	0	0
October 2017	0	0	0	0
November 2017	0	0	0	0
December 2017	0	0	0	0
January 2018	1,583	95,205	60.14	60.34
February 2018	0	0	0	0
March 2018	0	0	0	0
April 2018	783	50,088	63.97	64.17
May 2018	9,241	600,149	64.94	65.14
June 2018	11,676	724,433	62.04	62.24
Total	25,384	1,593,268	62.77	62.97

13.4.5 The aggregation of electricity procured through the interconnector on the MGP and the MI resulted in a total consumption of 931,839MWh at a cost of €57,358,113 (Figure 55 refers). The average adjusted rate for electricity procured in this respect amounted to €61.75/MWh.

13.4.6 It must be noted that Enemalta incurs other charges relating to the use of the interconnector. An annual service charge of €360,000 was incurred by Enemalta in 2017. In addition, Enemalta informed the NAO that, in 2017, €707,740 were incurred as imbalance payments charged by Enel. Requests for imbalance payments incurred by Enemalta in 2018 remained unaddressed, while it was not possible for the NAO to determine the annual fixed charge for 2018, as this was contingent on the volume of annual consumption through the interconnector. In addition, a daily nomination charge of €0.10/MWh was to be levied and paid monthly by Enemalta. Details regarding this charge were not made available. In view of incomplete information, these costs were not considered in determining the interconnector rate.

Figure 55: Rate for electricity procured through the Interconnector – MGP and MI, April 2017 – June 2018

Period	Units (MWh)	Cost (€)	Rate (€/MWh)	Adjusted Rate (€/MWh)
April 2017	68,128	3,890,578	57.11	57.31
May 2017	88,858	5,259,971	59.20	59.40
June 2017	62,722	3,839,931	61.22	61.42
July 2017	81,025	5,415,336	66.84	67.04
August 2017	66,966	4,826,835	72.08	72.28
September 2017	10,891	676,316	62.10	62.30
October 2017	30,157	2,192,445	72.70	72.90
November 2017	87,475	5,137,884	58.74	58.94
December 2017	54,286	3,443,481	63.43	63.63
January 2018	90,867	5,670,494	62.40	62.60
February 2018	37,851	2,410,238	63.68	63.88
March 2018	77,919	4,399,570	56.46	56.66
April 2018	82,589	4,435,315	53.70	53.90
May 2018	35,344	2,349,399	66.47	66.67
June 2018	56,761	3,410,320	60.08	60.28
Total	931,839	57,358,113	61.55	61.75

13.4.7 Energy delivery charges levied by ElectroGas Ltd during the period April 2017 to June 2018 in respect of Delimara 4 amounted to €111,452,821 and corresponded to 1,411,496MWh of electricity (Figure 56 refers). This resulted in an average rate of €78.96/MWh for electricity delivered, as invoiced by ElectroGas Ltd. Disputed amounts were not deducted from the invoiced amounts as these were still pending at the time of reporting. Moreover, amounts in dispute did not substantially alter the rates arrived at.

Figure 56: Rate for energy delivered through Delimara 4, April 2017 – June 2018

Month	Units (MWh)	Invoiced Amount (€)	Rate (€/MWh)
April 2017	41,255	3,884,421	94.16
May 2017	43,647	4,333,667	99.29
June 2017	101,697	8,324,639	81.86
July 2017	114,725	9,208,858	80.27
August 2017	141,196	10,857,689	76.90
September 2017	148,121	11,249,216	75.95
October 2017	115,267	8,814,093	76.47
November 2017	64,497	4,999,043	77.51
December 2017	114,790	8,864,999	77.23
January 2018	80,683	6,293,190	78.00
February 2018	103,347	7,998,628	77.40
March 2018	74,617	5,786,184	77.55
April 2018	53,540	4,204,691	78.53
May 2018	105,260	8,120,560	77.15
June 2018	108,854	8,512,943	78.21
Total	1,411,496	111,452,821	78.96

13.4.8 Limiting the cost of electricity sourced from Delimara 4 solely to energy delivery payments provides a partial account of the expense incurred by Enemalta, as for every unit of energy delivered, Enemalta pays an energy availability fee. Energy availability charges levied by ElectroGas Ltd average out at a rate of €33.43/MWh (Figure 57 refers).

Figure 57: Rate for energy made available through Delimara 4, April 2017 – June 2018

Month	Units (MWh)	Invoiced Amount (€)	Rate (€/MWh)
April 2017	n/a	2,142,515	n/a
May 2017	n/a	2,042,890	n/a
June 2017	n/a	3,168,886	n/a
July 2017	92,770	3,128,956	33.73
August 2017	127,573	4,244,080	33.27
September 2017	147,600	4,911,538	33.28
October 2017	113,782	3,832,075	33.68
November 2017	96,068	3,205,120	33.36
December 2017	148,805	4,978,757	33.46
January 2018	151,178	5,030,146	33.27
February 2018	114,056	3,795,952	33.28
March 2018	92,332	3,093,794	33.51
April 2018	60,081	2,021,006	33.64
May 2018	115,619	3,876,442	33.53
June 2018	124,741	4,162,780	33.37
Total¹	1,384,605	53,634,937	33.43

Note:

1. The calculation of the average rate for energy made available does not take into account the period April to June 2017, as information regarding the amount of units of energy made available was not provided.

13.4.9 Having established the cost of electricity sourced by Enemalta through Delimara 4 and the interconnector, the NAO sought to compare rates and establish variance in this respect. In the consideration of rates, this Office aggregated the rates of energy delivered and energy made available through Delimara 4 and compared this to the rate of electricity sourced from the interconnector, which was adjusted to include scheduling fees. Evident in Figure 58 is the difference in rates, with Delimara 4 costing, on average, €50.64/MWh more than the interconnector.

Figure 58: Comparison of electricity rates of Delimara 4 and the Interconnector, April 2017 - June 2018

Period	Delimara 4		Interconnector Adjusted Rate (€/MWh)	Variance
	Energy Delivered Rate (€/MWh)	Energy Availability Rate (€/MWh)		[Delimara 4 – Interconnector] (€/MWh)
April 2017	94.16	n/a	57.31	n/a
May 2017	99.29	n/a	59.40	n/a
June 2017	81.86	n/a	61.42	n/a
July 2017	80.27	33.73	67.04	46.96
August 2017	76.90	33.27	72.28	37.89
September 2017	75.95	33.28	62.30	46.93
October 2017	76.47	33.68	72.90	37.25
November 2017	77.51	33.36	58.94	51.93
December 2017	77.23	33.46	63.63	47.06
January 2018	78.00	33.27	62.60	48.67
February 2018	77.40	33.28	63.88	46.80
March 2018	77.55	33.51	56.66	54.40
April 2018	78.53	33.64	53.90	58.27
May 2018	77.15	33.53	66.67	44.01
June 2018	78.21	33.37	60.28	51.30
Total	78.96	33.43	61.75	50.64

13.4.10 The €50.64/MWh variance represents a conservative figure, as the NAO did not take into account other availability costs incurred by Enemalta for energy made available and not delivered. Had the NAO taken into account all of the availability costs incurred by Enemalta, the aggregate cost of Delimara 4 would have increased from €112.39/MWh to €116.96/MWh. Similarly, this Office did not consider take or pay deficiency payments arising out of obligations stipulated in the PPA and the GSA. Accounting for these costs would have increased the variance between energy procured through Delimara 4 and that sourced through the interconnector. However, it must be noted that capital costs incurred by Enemalta for the construction of the interconnector, and any other costs associated therewith, were also not factored in the comparison.

13.4.11 Aside from the above considerations, which relate to increases in the cost of energy procured through Delimara 4, the NAO identified scope for the reduction of the rate of electricity sourced from the interconnector. In arriving at this conclusion, this Office analysed Enemalta’s purchasing decisions of electricity from the MGP on an hour-by-hour basis. The NAO established €78.96/MWh, the average rate for energy delivered charged by ElectroGas Ltd, as the threshold for decisions. For the purpose of this analysis, the NAO did not consider availability payments, as costs incurred in this regard occur irrespective of Enemalta’s purchasing decisions. Similarly excluded was the capital cost outlay incurred by Enemalta in the construction of the interconnector infrastructure. Instances when the cost of purchasing electricity from the interconnector were less than this rate presented opportunities for purchases to be made by Enemalta through this source. The opposite, that is, instances when the rate of interconnector-procured electricity was higher than €78.96/MWh, indicated that such purchases were not

to be made and Delimara 4 availability maximised instead. Despite requests, the NAO was not provided with information relating to the hourly utilisation of Delimara 4. This limited the Office's analysis, in that it was not possible to compare utilisation in specific hours of Delimara 4 and the interconnector. Therefore, the Office was not in a position to identify opportunities where cost savings could have been registered. In practical terms, the Office could not ascertain whether there were instances when, despite energy availability at Delimara 4, Enemalta purchased electricity from the interconnector at a rate higher than €78.96/MWh. In addition, this Office did not have information relating to total hourly demand, which would have provided context to the analysis undertaken. Furthermore, the analysis did not account for the possible impact of technical considerations on purchasing decisions, owing to the limited information at hand.

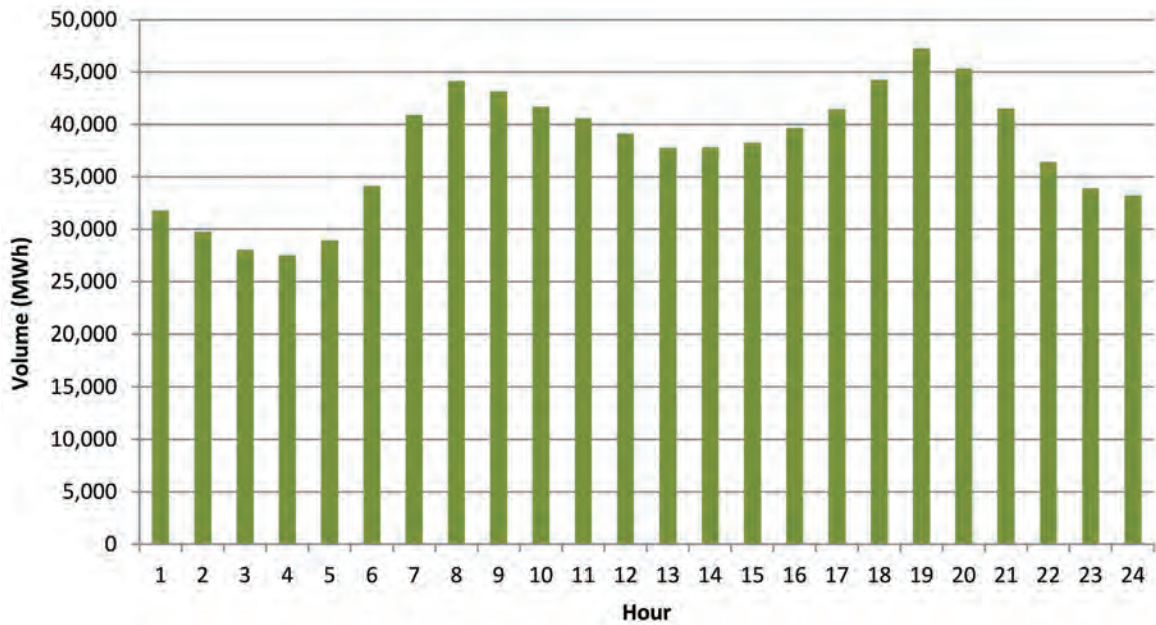
13.4.12 In view of the limited information, the NAO was constrained to solely analyse data sourced through the MGP. The NAO analysed 10,968 hours of data captured in this respect and established that in 8,051 hours, the price of electricity through the interconnector, as quoted on the MGP, was less than €78.96, while in 2,917 hours the rate was higher.

13.4.13 Based on this review, the NAO established that Enemalta made purchases through the interconnector in 9,431 hours out of the 10,968 hours analysed. The rate was less than €78.96/MWh in 6,970 hours out of the 9,431 hours, during which period Enemalta procured 668,554MWh for a total of €33,824,573. On the other hand, the rate was higher in 2,461 hours, when Enemalta purchased 238,338MWh for €21,964,839. When one considers that Enemalta purchased 668,554 MWh in 6,970 hours, then the rate at which purchases were effected when interconnector prices were favourable compared to Delimara 4 rates was 95.92MWh/h. On the other hand, given that Enemalta procured 238,338MWh in 2,461 hours when interconnector rates were disadvantageous compared to Delimara 4 rates, then the rate of purchase was 96.85MWh/h. In the NAO's opinion, the proximity in rates renders evident Enemalta's approach to effecting purchases through the interconnector, with price bearing minimal influence on the decision to procure volumes of electricity.

13.4.14 In 1,537 of the 10,968 hours analysed, the NAO established that Enemalta effected no purchases. Of these, in 1,081 hours the rate of electricity supplied through the interconnector was less than €78.96, while in the remaining 456 hours, the rate was higher. Notwithstanding this, the Office acknowledges that Enemalta's options in determining the sources and extent of energy procured were limited by constraints imposed in terms of take or pay obligations arising from the PPA and the GSA.

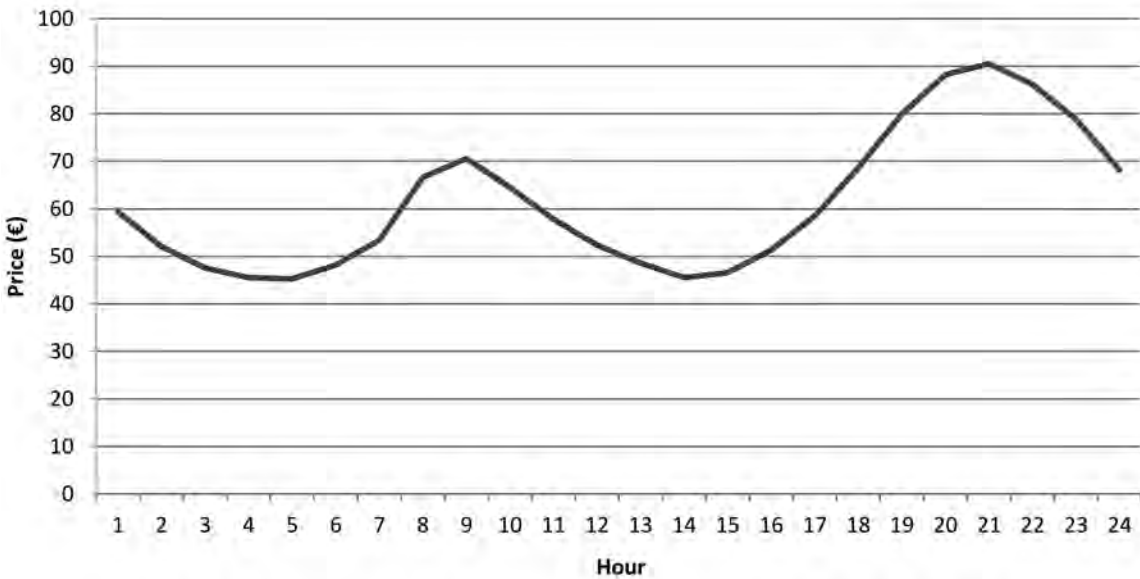
13.4.15 Analysis of the volume and price data of purchases made through the MGP by hour indicates varying levels of utilisation of the interconnector by Enemalta (Figure 59 refers). The plot of total volumes purchased against hour depicts two peaks, with maximum recorded volumes purchased at 7am and 6pm. For the period April 2017 and June 2018 (457 days), Enemalta purchased a total of 47,281MWh between 6pm and 7pm, implying a mean rate of purchase of 103.46MWh/h. By contrast, between 3am and 4am, Enemalta sourced 27,518MWh, resulting in an average rate of purchase of 60.21MWh/h.

Figure 59: Total volumes of electricity purchased through the MGP by hour, April 2017 – June 2018



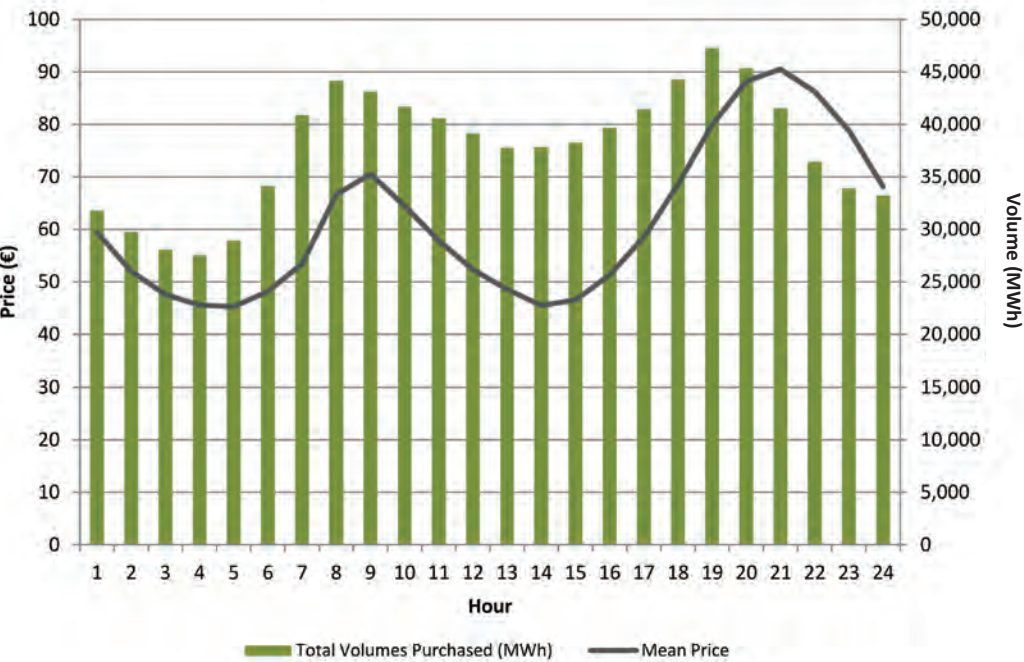
13.4.16 A similar trend was noted in terms of the average price registered on the MGP, which also varied by hour and similarly had two peaks, with maximum price registered at 8am and 8pm (Figure 60 refers). The maximum average price was recorded between 8pm and 9pm, with a rate of €90.55/MWh during this hour. By contrast, a rate of €45.30/MWh represented the minimum average price and corresponded to the hour between 4am and 5am.

Figure 60: MGP average price by hour, April 2017 – June 2018



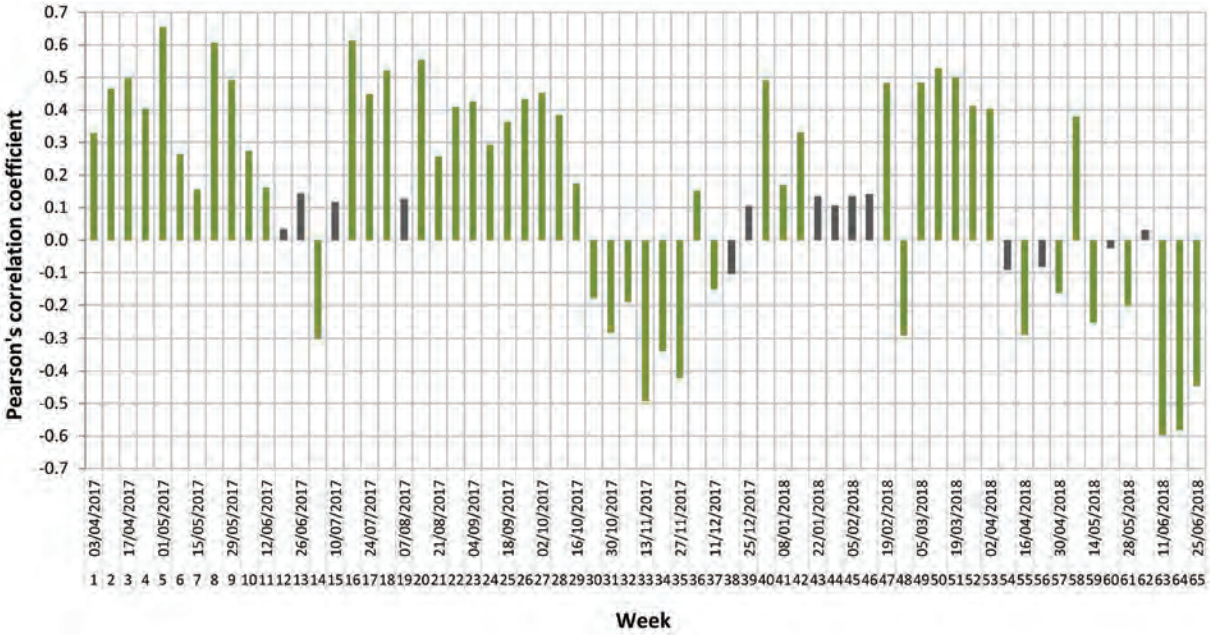
13.4.17 The NAO compared the hourly average price recorded on the MGP with the total volumes of electricity purchased by Enemalta, through the MGP, correspondingly aggregated by hour. Figure 61 refers presents this analysis through the superimposition of Figures 59 and 60. Of interest to this Office was that the trend noted in volumes purchased by Enemalta through the interconnector followed the trend observed in the average price for electricity on the MGP.

Figure 61: Volumes of electricity purchased through the MGP and average price by hour, April 2017 – June 2018



13.4.18 The trend observed and illustrated in Figure 61 was confirmed through correlation analysis. Correlation coefficients obtained may range from -1 to +1. In the case of a positive correlation coefficient, this implies that the two variables are changing in the same direction, such that if one is increasing, the other is also increasing, and vice-versa. On the other hand, in the case of a negative correlation, as one variable increases, the other decreases. The magnitude of the coefficient indicates the size of the observed effect, with commonly utilised thresholds of +/-0.1 representing a small effect, +/-0.3 a medium effect and +/-0.5 a large effect. While a coefficient of +/-1 represents a perfect correlation with proportionate changes in variables, 0 indicates no linear relationship. Presented in Figure 62 is the Pearson’s correlation coefficient for volumes sourced through the MGP and price. This statistic was calculated separately for each week of the period under analysis. Bars shown in grey indicate a non-significant correlation, while those in green relate to significant correlations with varying size effects.

Figure 62: Pearson’s correlation coefficient for volumes purchased through the MGP and price by week, April 2017 – June 2018



13.4.19 Out of the 65 weeks analysed, a non-significant relationship was noted in 14 weeks (Figure 63 refers). Of the remaining 51 weeks, 35 exhibited a positive correlation, while 16 showed a negative correlation. In this case, a positive correlation implies that, during the particular week under review, as the price of electricity on the MGP increased, greater volumes were purchased; or alternatively, as the price of electricity on the interconnector decreased, less volumes were procured. On the other hand, a negative correlation implies that as the price of electricity increased, less volumes were sourced; or, as the price of energy through the interconnector decreased, greater volumes were procured. Of note to the NAO were instances of medium and strong positive correlation, which corresponded to 26 weeks and accounted for 40 per cent of the period under analysis. Instances of medium to strong negative correlation were noted in seven weeks of the period reviewed, corresponding to 11 per cent of the period.

Figure 63: Frequency of correlation coefficients, April 2017 - June 2018

Correlation coefficient		Instances observed (weeks)
Significant positive correlation at the 95% confidence level	$r \geq 0.5$	7
	$0.3 \leq r < 0.5$	19
	$r < 0.3$	9
Non-significant		14
Significant negative correlation at the 95% confidence level	$r \geq -0.5 $	2
	$ -0.3 \leq r < -0.5 $	5
	$r < -0.3 $	9
Total		65

13.4.20 The three instances showing the strongest positive correlation, indicative of poor purchasing decisions made by Enemalta, are depicted in Figures 64, 65 and 66, which illustrate energy sourced through the MGP on the weeks starting 1 May 2017, 22 May 2017 and 17 July 2017.

Evident in these weeks was that as the price of electricity sourced through the interconnector increased, greater volumes were purchased, and as the price decreased, less volumes were procured. Compounding matters are instances when the price of the interconnector was higher than that of Delimara 4, yet Enemalta purchased substantial volumes on the MGP regardless.

Figure 64: Hourly interconnector volumes purchased and market price and Delimara 4 rate, week starting 01/05/17

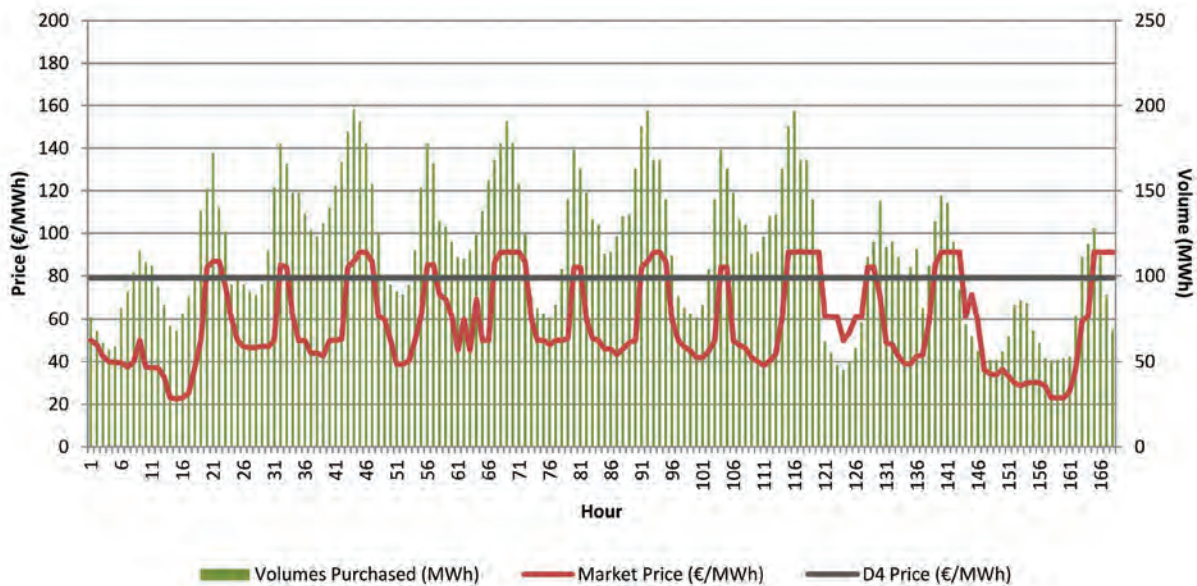
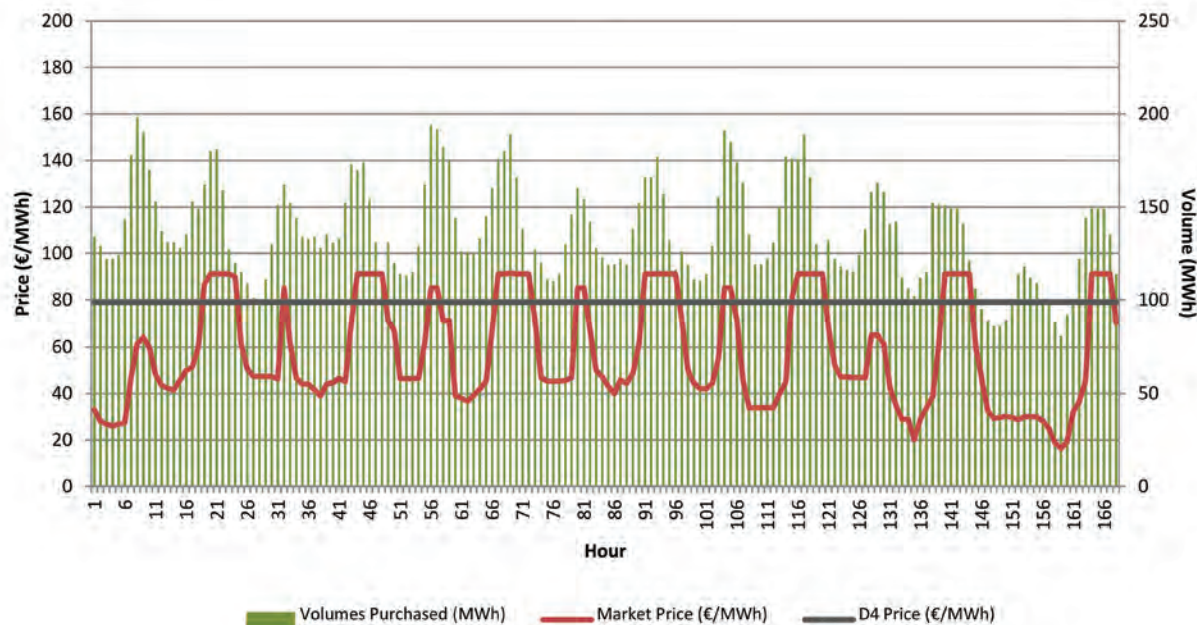


Figure 65: Hourly interconnector volumes purchased and market price and Delimara 4 rate, week starting 22/05/17





Chapter 13

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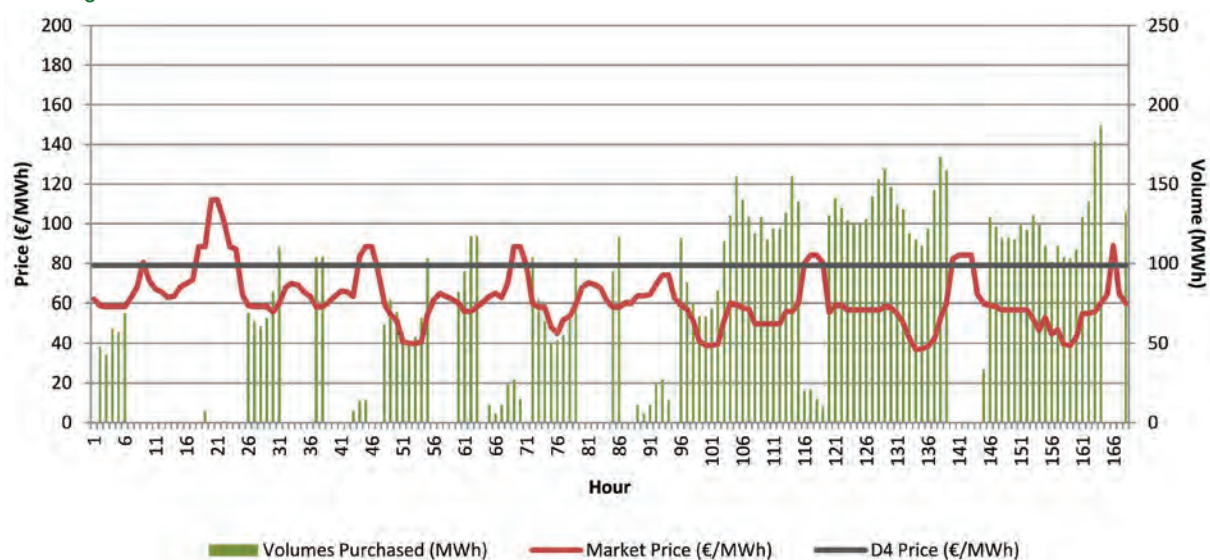
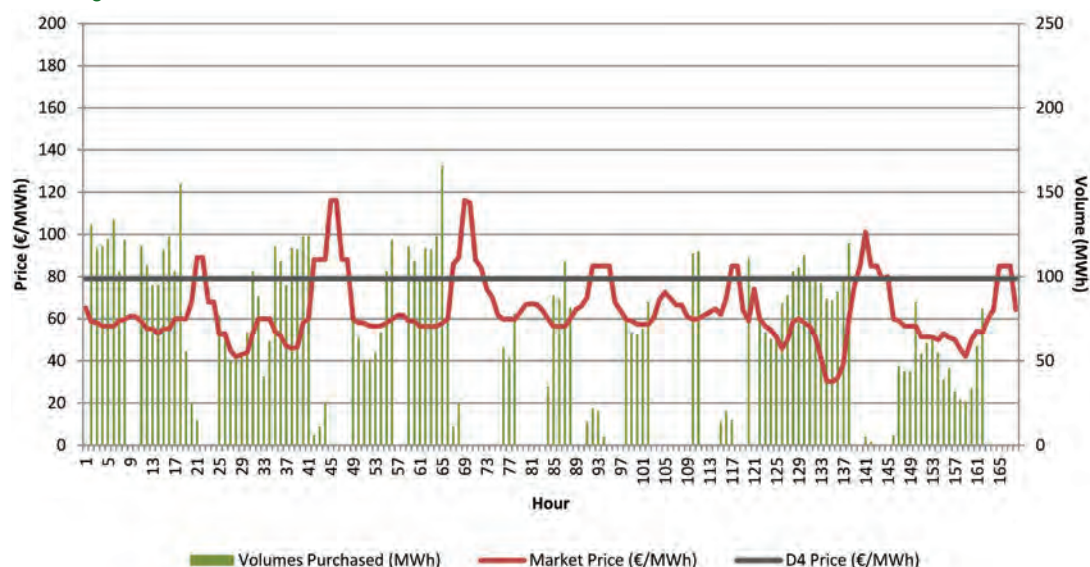


Figure 68: Hourly interconnector volumes purchased and market price and Delimara 4 rate, week starting 18/06/18



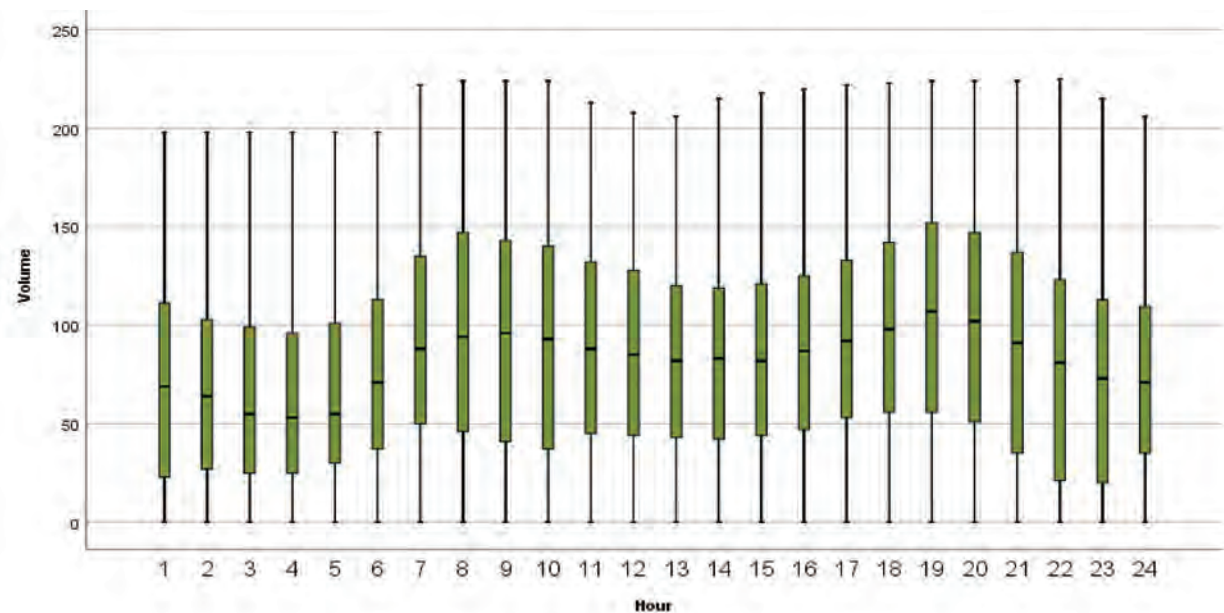
13.4.22 Enemalta informed the NAO that when interconnector rates are favourable it attempts to increase its electrical generation cost efficiency by reducing demand from Delimara 3 and Delimara 4 and increasing demand from the interconnector. In addition, Enemalta indicated that due to technical and other considerations, it was not always possible to choose the most cost-effective energy source. Notwithstanding this, concerns emerged with respect to purchasing decisions made by Enemalta following the NAO's analysis of volumes sourced through the interconnector. Had Enemalta effected more purchases through the interconnector when rates were favourable, then one would have expected a greater incidence of weeks where a significant negative correlation existed. Further accentuating the NAO's concerns are the multiple instances where a positive correlation was registered, which indicated that more volumes were purchased as the rate of electricity sourced through the interconnector increased. This supports the Office's understanding of less than optimal procurement decisions, with ample scope for cost reduction in sourcing energy.

13.4.23 The NAO simulated a scenario wherein the total volumes of electricity sourced by Enemalta through the MGP for the period April 2017 to June 2018, equivalent to 906,892MWh, were equally distributed over the total hours in the period, amounting to 10,968 hours. Under this scenario, constant purchases of 82.69MWh were considered for each hour during the period under review, irrespective of the price. The total cost of these 906,892MWh was computed by multiplying the sum of the hourly rates as quoted on the MGP and the scheduling fees by the constant purchase volume for each hour, that is, 82.69MWh. This resulted in a total cost of €55,888,651, equivalent to an average rate of €61.63/MWh. This cost was marginally lower than the actual incurred total cost of €55,970,791, equivalent to an average rate of €61.72/MWh. It is in this context that concerns regarding the effectiveness of Enemalta's purchasing decisions increase, as a passive buying strategy (one where Enemalta purchases a constant volume every hour) would have yielded savings of €82,140 over the 15-month period under review.

13.4.24 An alternative scenario was also simulated by the NAO, wherein the total volumes of electricity sourced by Enemalta through the MGP for the period April 2017 to June 2018, equivalent to 906,892MWh, were equally distributed over 8,048 hours, which represent the total hours in the period during which the price of the interconnector was lower than that of Delimara 4. This scenario represented a constant purchase volume of 112.69MWh, with buying limited to those hours during which the price of the interconnector was favourable in comparison to Delimara 4, determined by this Office as €78.96. This resulted in a total cost of €45,851,767, equivalent to a rate of €50.56/MWh. Compared to the actual cost incurred by Enemalta, this buying strategy would have yielded cost savings of €10,119,023 over the 15-month period under review.

13.4.25 The feasibility of these scenarios would have been better ascertained had Enemalta provided the NAO with the hourly consumption records of Delimara 4. Notwithstanding this, assurance regarding the range of volumes required is provided through analysis of the interconnector. Figure 69 illustrates that the volumes considered by the NAO in the two scenarios fall within the range of volumes sourced by Enemalta for each hour of the day.

Figure 69: Boxplot of volumes purchased through the interconnector by hour, April 2017 – June 2018



13.4.26 Having reviewed purchases made by Enemalta through the interconnector and drawn comparison to the cost of electricity procured from Delimara 4, the NAO is of the opinion that there exist ample scope for improvement in purchasing decisions undertaken. While the NAO acknowledges that technical considerations relating to the procurement of energy from other sources impinge on purchasing decisions, the existence of such limitations are somewhat contradicted by the analysis undertaken by this Office, which rendered evident instances when Enemalta procured in a cost effective manner and the feasibility of altering purchasing patterns to reduce costs incurred. The Office is of the considered opinion that Enemalta ought to invest in a system that would assist it in the optimisation of purchasing decisions and regulate such a function through the formulation of appropriate policy.

Chapter 14

Conclusion

14.1 Timeline of Key Developments

- 14.1.1** At a conceptual level, the project may be organised in four major overlapping parts. First was the issuance of the EoIC in April 2013, which process resulted in 19 submissions. Evaluation of the EoIC was concluded in June 2013, where 11 bidders were recommended to proceed to the ensuing stage of selection.
- 14.1.2** The EoIC was immediately followed by the RfP, published in July 2013. Three consortia submitted bids with respect to the RfP, with the ElectroGas Consortium identified as the preferred bidder in October 2013.
- 14.1.3** The third part entailed formalisation of the contractual framework that was to regulate Enemalta's procurement of power and gas from ElectroGas Ltd. Although a number of agreements were entered into as early as May 2014, the key agreements, namely, the IA, the PPA and the GSA, were signed in April 2015. Despite delays, key project milestones were achieved, with the Energy Delivery Date and the Phase 2 Gas Delivery Date realised in August 2017 and September 2017, respectively.
- 14.1.4** The fourth and final part of the project related to its financing. To this end, an initial bridge loan facility of €110,000,000 was secured by ElectroGas Ltd in May 2015, with Government providing a corresponding guarantee. A number of other agreements, intended to regulate instances of possible default were entered into by Government, ElectroGas Ltd and its shareholders. In July 2015, the initial facility was replaced by a €450,000,000 bridge loan facility made available by a group of banks, with Government accordingly revising its guarantee. The EC deemed the SSA as not constituting state aid in January 2017, which decision led to Government, Enemalta and ElectroGas Ltd entering into this Agreement. Entry into the SSA and other agreements in December 2017 allowed for financial closing, thereby releasing Government from its obligations pursuant to the guarantee issued. Hereunder is a timeline of the key developments registered with respect to this project (Figure 70 refers).

Figure 70: Timeline of key events

Date	Details
11 April 2013	Enemalta issued an EoIC for the supply and delivery of natural gas under the terms of a long-term GSA and the supply and delivery of electricity under the terms of a long-term PPA.
10 May 2013	Closing date for the submission of proposals in terms of the EoIC. By this date, 19 submissions were received by Enemalta.
1 June 2013	The EoIC Evaluation Committee submitted its evaluation report to the Chair Programme Review Board. Of the 11 bids recommended to proceed to the RfP, five provided a partial solution. These partial solutions were to be rendered complete, through partnerships with other parties, for the RfP submission.
13 June 2013	Energy World International Ltd appealed the decision of the EoIC Evaluation Committee.
25 June 2013	The Procurement (Energy and Fuels) Appeals Board found against Energy World International Ltd.
6 July 2013	An RfP was launched, whereby EoIC shortlisted candidates were invited to submit detailed technical and financial proposals.
20 September 2013	Closing date for the submission of proposals in terms of the RfP. By this date, three submissions were received by Enemalta.
10 October 2013	The RfP Evaluation Committee concluded that the ElectroGas Consortium was to be considered as the Preferred Bidder, with the Endeavor Consortium as the Reserve Bidder.
12 October 2013	Minister MEH announced the selection of ElectroGas Consortium for the construction of a power station and the supply of electricity to Enemalta.
4 December 2013	Enemalta published the notice of award whereby the ElectroGas Consortium was awarded the contracts. The ElectroGas Consortium comprised Gasol plc and GEM Holdings Ltd, each with a 30 per cent shareholding, as well as, Siemens Project Ventures GmbH and Socar Trading SA, each with a 20 per cent shareholding.
9 May 2014	Share Purchase Agreement entered into by Enemalta, the shareholders of the ElectroGas Consortium and Malta Power and Gas Ltd, whereby Enemalta transferred its shares to the Consortium for a consideration of €30,000,000.
9 July 2014	Malta Power and Gas Ltd changed its name to ElectroGas Malta Ltd (referred to as ElectroGas Ltd throughout the report).
11 September 2014	Published financial statements of Gasol plc indicated that the Company did not have the necessary resources and assets and was unlikely to source the required capital to honour its commitments.
9 December 2014	Cabinet authorised MFIN to provide the necessary guarantees and to appear on behalf of, and represent, Government on documents relating to such guarantee and bridge loans as required for the project.
12 December 2014	Exclusive Berthing Rights Agreement entered into by ElectroGas Ltd and the Authority for Transport in Malta, whereby ElectroGas Ltd was granted the exclusive right to an area of sea. The area was to be utilised for the berthing, mooring of vessels and any other matter related to the IA, and was to be in effect until the expiry or termination of the IA.



16 December 2014	Site Lease Deed entered into between Enemalta and ElectroGas Ltd, whereby Enemalta sublet the premises where the project was to be undertaken.
18 December 2014	Interim Bridge Loan Facility of €110,000,000 advanced by BoV to ElectroGas Ltd in order to finance the initial project costs.
18 December 2014	MFIN sought clearance from the SAMB for the issue of the Government Guarantee in respect of 80 per cent of the €110,000,000 bridge loan, that is, €88,000,000.
19 December 2014	Government Guarantee entered into between Government, BoV and ElectroGas Ltd pursuant to the €110,000,000 Interim Bridge Loan Facility. The Government Guarantee covered up to 80 per cent of the €110,000,000 Interim Bridge Loan Facility, while the remaining 20 per cent was to be covered by ElectroGas Ltd through letters of credit. The fee charged by Government for this Guarantee up to 3 August 2015 amounted to €277,444.
13 April 2015	Enemalta – LNG SPA Direct Agreement entered into by Enemalta, Socar Trading SA and ElectroGas Ltd, whereby, in the event of termination of the LNG SPA or the IA, Enemalta could be assigned and novated the LNG SPA.
13 April 2015	FSU Conversion and Charter Agreement entered into by ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd, whereby ElectroGas Ltd hired a converted FSU from 3 April 2017 for a period of 18 years and 2 months.
13 April 2015	FSU – Enemalta Charter Direct Agreement entered into by Enemalta, ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd, whereby, in the case of the termination of the IA, Armada Floating Gas Storage Malta Ltd could be paid termination costs or Enemalta be assigned and novated the FSU Conversion and Charter Agreement.
13 April 2015	FSU O&M Agreement entered into by ElectroGas Ltd and Armada Floating Gas Services Malta Ltd, which regulated the operation, maintenance and repair of the FSU by the latter party until the expiry or earlier termination of the FSU Conversion and Charter Agreement.
13 April 2015	FSU – Enemalta O&M Direct Agreement entered into by Enemalta, ElectroGas Ltd and Armada Floating Gas Services Malta Ltd, whereby, in the case of the termination of the IA, Armada Floating Gas Services Malta Ltd could be paid termination costs or Enemalta be assigned and novated the FSU O&M Agreement.
13 April 2015	FSU – Enemalta Bridge Direct Agreement entered into between Enemalta, ElectroGas Ltd, Armada Floating Gas Storage Malta Ltd and Armada Floating Gas Services Malta Ltd. Through this Agreement Government or Enemalta was to be assigned and novated the FSU Conversion and Charter Agreement and the FSU O&M Agreement in certain circumstances.
14 April 2015	IA entered into by Enemalta and ElectroGas Ltd, whereby the framework of responsibilities and obligations that were to be borne by the parties in terms of the project were stipulated.
14 April 2015	PPA entered into by Enemalta and ElectroGas Ltd, which regulated the terms and conditions under which electricity was to be sold to Enemalta. Electricity was to be generated by ElectroGas Ltd at the newly constructed power plant, referred to as Delimara 4.

14 April 2015	GSA entered into by Enemalta and ElectroGas Ltd, which regulated the procurement of gas for the operation of Delimara 3.
14 April 2015	Site Services Agreement entered into by Enemalta and ElectroGas Ltd, wherein Enemalta was to provide certain services relating to the construction and operation phases of Delimara 4 and the operation phase of the gas facilities.
14 April 2015	Electricity Connection Agreement entered into by Enemalta and ElectroGas Ltd, whereby Enemalta granted ElectroGas Ltd the right to connect Delimara 4 to the network at the stipulated connection point.
14 April 2015	Side Letter entered into by Enemalta, ElectroGas Ltd, Gasol Malta Ltd, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, whereby, pending the sanctioning of the EC, that the SSA and the Transaction Agreements (referring to all of the aforementioned agreements entered into on 13 April 2015 and 14 April 2015) were to be placed in escrow pending a positive decision by the EC.
14 April 2015	LNG SSA entered into by Government and Socar Trading SA, whereby Government secured an obligation from Socar Trading SA to continue to supply LNG even in circumstances that would otherwise permit Socar Trading SA to cease supply.
14 April 2015	LNG SPA entered into by ElectroGas Ltd and Socar Trading SA, regulating the sale of LNG by Socar Trading SA and its purchase by ElectroGas Ltd. The LNG SPA was to be in force until 14 August 2026, unless extended through mutual agreement or terminated earlier in certain circumstances.
14 April 2015	Scheduled Start Date of the project as cited in the IA. Works were to be completed within 24 months.
23 April 2015	Gasol (Malta) Ltd, GEM Holdings Ltd, Siemens Project Venture GMBH and Socar Trading SA resolved to amend the Articles of Association of ElectroGas Ltd, whereby the transfer of shares and any amendments to the Articles would require the unanimous consent of all shareholders and the written consent of Government.
28 May 2015	Interim Bridge Loan Facility of €110,000,000 was increased to €137,500,000.
28 May 2015	Government Guarantee was revised to reflect the increase in the Interim Bridge Loan Facility, by €22,000,000. The fee charged by Government for this extension to the Guarantee up to 3 August 2015 amounted to €20,472.
16 July 2015	ElectroGas Ltd informed the Minister MEH and Enemalta that Gasol plc was facing difficulty in raising equity to continue to support the project. Siemens Project Ventures GmbH, GEM Holdings Ltd and Socar Trading SA jointly decided to raise their equity and replace Gasol (Malta) Ltd.
21 July 2015	MEH informed ElectroGas Ltd that there was no objection to the revised composition of the Consortium subject to any contractual or other obligations in relation to third parties. The MEH sought legal advice with regard to the implications of the transfer of shares of Gasol (Malta) Ltd, purely from a public procurement perspective.
21 July 2015	The Gasol Evaluation Committee, appointed by Enemalta to review whether the change in shareholding still fulfilled the bidders' qualification criteria outlined in the RfP, deemed the departure of Gasol plc as having no impact on the evaluation process.
22 July 2015	Enemalta consented to the revised shareholding structure as proposed, subject that ElectroGas Ltd adhere to the Delimara 4 project schedule.

22 July 2015	Transfer of shares of Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd was registered with the MFSA.
24 July 2015	ElectroGas Ltd announced that Gasol plc no longer formed part of the ElectroGas Consortium.
27 July 2015	Pre-Financial Closing Share Transfer Restriction Agreement entered into between Enemalta and ElectroGas Ltd, whereby certain restrictions were imposed on the transfer of shares of ElectroGas Ltd prior to Financial Closing, that is, January 2018.
27 July 2015	Accession Compensation Agreement entered into between Government and ElectroGas Ltd, wherein it was acknowledged that ElectroGas Ltd had secured a €450,000,000 bridge loan for which Government had provided a guarantee. The Accession Compensation Agreement regulated the effects of accession in this respect.
27 July 2015	Share Call Option Agreement entered into by Government, GEM Holdings Ltd, Siemens Project Ventures GmbH, Socar Trading SA and ElectroGas Ltd, whereby Government could acquire the shares in ElectroGas Ltd should certain circumstances arise.
27 July 2015	Share Transfer Agreement entered into by Government, GEM Holdings Ltd, Siemens Project Ventures GmbH, Socar Trading SA and ElectroGas Ltd, regulating the transfer of shares of ElectroGas Ltd to Government on the occurrence of an accession trigger.
28 July 2015	€450,000,000 Bridge Loan Facility Agreement entered into by ElectroGas Ltd, BoV, KfW IPEX-Bank GmbH, HSBC Bank Malta plc, Société Générale London Branch and Government. ElectroGas Ltd, as borrower, was to utilise the facility made available by the lenders, secured by Government as guarantor, for the settlement of project-related costs.
29 July 2015	Legal advice obtained by the MEH concluded that there was a strong basis to argue that the Gasol plc share transfer did not infringe the principles of the TFEU, although whether a change was permissible would always depend on a specific assessment of the facts on a case-by-case basis.
30 July 2015	Opposition MPs on the PAC and the Shadow Minister for the Environment, Energy and Transport requested the AG to investigate matters relating to the selection of ElectroGas Consortium and the contracts awarded for the supply of gas to and purchase of power by Enemalta.
31 July 2015	Government Guarantee entered into by Government, BoV (acting as the facility agent and security trustee) and ElectroGas Ltd, pursuant to the €450,000,000 Bridge Loan Facility Agreement. The maximum liability of Government was capped at €432,000,000. The fee charged by Government for this guarantee up to 31 May 2017 amounted to €8,382,000.
21 August 2015	Further concerns raised by Opposition MPs on the PAC, in particular, with regard to the state guarantee that was to assist the ElectroGas Consortium secure bank loans to finance the project.

17 February 2016	Plant Manning Agreement entered into between ElectroGas Ltd, ERL (a Government-owned company) and ESBI, whereby the latter was to provide operation and maintenance-related services in respect of Delimara 4 through the engagement of ERL human resources. The Plant Manning Agreement was to expire on 10 August 2022 unless terminated earlier.
25 April 2016	Additional concerns raised by the Leader of the Opposition, wherein it was alleged that prior to the 2013 general election, the Nationalist Party had been approached by Gasol plc and GEM Holdings Ltd, among other investors, with an identical proposal to that selected by Enemalta.
28 June 2016	Government submitted plans relating to the Delimara Gas and Power Energy Plant to the EC for assessment in terms of EU state aid rules.
14 August 2016	Commencement of the Early Gas Period.
14 October 2016	Scheduled Open Cycle Energy Delivery Date, that is, the point at which Delimara 4 would generate 134 MW through a mode of operation where the flue gases from a gas turbine generator are fed directly to the atmosphere (that is, Open Cycle mode).
14 October 2016	Scheduled Gas Availability Date, that is, the point at which the gas facility was functionally complete, in line with specifications and able to deliver gas to Delimara 3. On fulfilment of these conditions, the First Gas Date was considered to have occurred.
14 October 2016	Scheduled Phase 1 Gas Delivery Date, that is, the point at which ElectroGas Ltd was to supply gas for the first four turbines of Delimara 3, as converted by a third party to operate on gas.
11 January 2017	EC decision issued, whereby the Transaction Agreements and the SSA were deemed compliant with EU state aid rules.
16 March 2017	First Gas Date, and therefore the Phase 1 Gas Delivery Date, was achieved by ElectroGas Ltd. Delay charges amounting to €2,295,000 were levied by Enemalta on ElectroGas Ltd.
5 April 2017	Open Cycle Energy Delivery Date achieved by ElectroGas Ltd. Enemalta charged ElectroGas Ltd €10,440,000 as delay charges corresponding to the 174 days of delay from the Scheduled Open Cycle Energy Delivery Date.
5 April 2017	Commencement of the fixed price period for Energy Availability Payments, which was to apply for the first five years of the PPA. The base capacity charge for power was €14.70/MWh, while the base capacity charge for gas was €13.50/MWh. Other factors that were to be considered in the calculation of the Energy Availability Payment were the Demonstrated MW Available, the hourly availability weights and an adjustment factor.
5 April 2017	Commencement of the fixed price period for Energy Delivery Payments, which was to apply for the first five years of the PPA. The Energy Delivery Payment comprised the effective commodity price of gas and a variable operating cost of €0.07/mmBTU, subject to HICP revisions, the guaranteed Delimara 4 heat rate, and the total variable operating cost for power and gas, established as €4.10/MWh.
12 April 2017	Last Open Cycle Energy Delivery Date, that is, the last date by which operation in Open Cycle mode was to be achieved by ElectroGas Ltd.

12 April 2017	Last Phase 1 Gas Delivery Date, that is, the last date by which ElectroGas Ltd was to supply gas for Phase 1 of Delimara 3.
14 April 2017	Scheduled Energy Delivery Date, that is, the point at which Delimara 4 would generate 205 MW when operating at reference conditions on Combined Cycle. In Combined Cycle mode, the output heat of the gas turbine flue gas is recovered to generate additional electricity.
14 April 2017	Commencement of the Fixed Price LNG Supply Term for Gas Availability Payments, which was to apply for the first five years of the GSA. The base gas availability charge was €0.784/mmbTU. Other factors that were to be considered in the calculation of the Gas Availability Payment were the quantity of gas made available and an adjustment factor.
14 April 2017	Commencement of the Fixed Price LNG Supply Term for Gas Delivery Payment, which was to apply for the first five years of the GSA. The Gas Delivery Payment comprised the summation of an allowance in respect of gas cost recovery and another allowance relating to other operating costs. The total variable operating cost for gas was €0.07/mmbTU.
14 April 2017	Scheduled Phase 2 Gas Delivery Date, that is, the point at which ElectroGas Ltd was to supply gas for the remaining four turbines of Delimara 3, as converted by a third party to operate on gas.
28 May 2017	Final Maturity Date, that is, the date by which the €450,000,000 Bridge Loan Facility was to be repaid. This was extended to 29 December 2017.
1 June 2017	Extension to the Government Guarantee corresponding to the €450,000,000 Bridge Loan Facility. The fee charged by Government for this Guarantee up to 29 December 2017 amounted to €2,655,518.
10 August 2017	Energy Delivery Date achieved by ElectroGas Ltd. Enemalta charged ElectroGas Ltd €9,680,000 as delay charges corresponding to the 121 days of delay from the Scheduled Energy Delivery Date.
28 September 2017	Phase 2 Gas Delivery Date was achieved by ElectroGas Ltd. No delay liquidated damages were charged by Enemalta with regard to Phase 2, for the €18,000,000 capping had been reached with respect to Phase 1 of the GSA and the PPA by the time these delays were realised.
11 October 2017	Last Energy Delivery Date, that is, the last date by which operation in Combined Cycle mode was to be achieved by ElectroGas Ltd.
11 October 2017	Last Phase 2 Gas Delivery Date, that is, the last date by which ElectroGas Ltd was to supply gas for Phase 2 of Delimara 3.
30 November 2017	Enemalta informed ElectroGas Ltd that the gas facilities overcapacity design requirement was waived.
30 November 2017	Enemalta informed ElectroGas Ltd that amounts due and payable by the latter pursuant to the Transaction Agreements were exclusive of excise taxes.
7 December 2017	LNG SSA Termination Agreement entered into between Government and Socar Trading SSA, whereby the LNG SSA was to terminate on financial closing.

14 December 2017	Site Lease Deed Direct Agreement entered into by Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd, assigning to the latter all rights and the benefit of the Site Lease Deed should ElectroGas Ltd default in its obligations to the secured parties represented by HSBC Corporate Trustee Company (UK) Ltd.
14 December 2017	Site Services Agreement Direct Agreement entered into by Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd, assigning to the latter all rights and the benefit of the Site Services Agreement should ElectroGas Ltd default in its obligations to the secured parties represented by HSBC Corporate Trustee Company (UK) Ltd.
14 December 2017	Electricity Connection Agreement Direct Agreement entered into by Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd, assigning to the latter all rights and the benefit of the Electricity Connection Agreement should ElectroGas Ltd default in its obligations to the secured parties represented by HSBC Corporate Trustee Company (UK) Ltd.
14 December 2017	Supply Agreements Direct Agreement entered into by Enemalta, ElectroGas Ltd and HSBC Corporate Trustee Company (UK) Ltd, assigning to the latter all rights and the benefit of the Supply Agreements, that is, the IA, CTA, PPA and GSA, should ElectroGas Ltd default in its obligations to the secured parties represented by HSBC Corporate Trustee Company (UK) Ltd.
14 December 2017	ElectroGas Ltd informed Siemens Aktiengesellschaft Österreich that warranties with respect to the EPC1 Contract were assigned to Enemalta.
15 December 2017	Delimara Security Agreement entered into between Government, Enemalta, the Lands Authority and ElectroGas Ltd, whereby certain provisions regarding the Delimara site were registered.
15 December 2017	Site Lease Addendum entered into by Enemalta and ElectroGas Ltd, whereby the confines of the leased premises were revised.
15 December 2017	ElectroGas Ltd informed J&P-AVAX S.A. that warranties with respect to the EPC2 Contract were assigned to Enemalta.
15 December 2017	SSA entered into by Government, Enemalta and ElectroGas Ltd, whereby in case of termination of the Supply Agreements, Government would ensure continuity of supply of electrical power by assuming Enemalta's obligation to purchase electricity and gas.
29 December 2017	Final Maturity Date, that is, the date by which the €450,000,000 Bridge Loan Facility was to be repaid. ElectroGas Ltd duly repaid the Facility when long-term financing for the project was secured.
29 December 2017	Government Guarantee was released following settlement of the €450,000,000 Bridge Loan Facility by ElectroGas Ltd.
January 2018	Financial Closing achieved, that is, the date on which all conditions precedent in accordance with the Financing Agreements had been satisfied or waived. The conditions related to the finalisation of the contractual framework regulating the project, including all project-related, financing and direct agreements, as well as, the SSA.

5 April 2022	Commencement of the indexed price period for Energy Availability Payments, which was to apply for the remaining period of the PPA. The base capacity charge for power was €21.42/MWh, while the base capacity charge for gas was €13.50/MWh, duly revised by the HICP. Other factors that were to be considered in the calculation of the Energy Availability Payment were the Demonstrated MW Available, the hourly availability weights and an adjustment factor.
5 April 2022	Commencement of the indexed price period for Energy Delivery Payments, which was to apply for the remaining period of the PPA. The Energy Delivery Payment comprised the effective commodity price of gas and a variable operating cost of €0.07/mmBTU, subject to HICP revisions, the guaranteed Delimara 4 heat rate, and the total variable operating cost for power and gas, established as €4.10/MWh and adjusted by the HICP.
14 April 2022	Commencement of the Indexed Price LNG Supply Term, which was to apply for the remaining period of the GSA. The base gas availability charge was €0.784/mmBTU; however, was subject to HICP revision. Other factors that were to be considered in the calculation of the Gas Availability Payment were the quantity of gas made available and an adjustment factor.
14 April 2022	Commencement of the Indexed Price LNG Supply Term for Gas Delivery Payment, which was to apply for the remaining years of the GSA. The Gas Delivery Payment comprised the summation of an allowance in respect of gas cost recovery and another allowance relating to other operating costs. The total variable operating cost for gas was €0.07/mmBTU, accordingly revised as per HICP.
14 April 2022	First Reference GSA Exit Date, whereby Enemalta could terminate the GSA by providing notice to ElectroGas Ltd prior to 20 June 2015. Enemalta did not give notice to ElectroGas Ltd in this respect.
14 August 2026	Second Reference GSA Exit Date, whereby Enemalta could terminate the GSA by providing notice to ElectroGas Ltd prior to April 2025.
14 December 2042	Expiry of the SSA unless all Supply Agreements were expired or terminated prior to this date.

14.2 Addressing the Terms of Reference

14.2.1 Having reviewed the process of selection leading to the award of the contracts by Enemalta to ElectroGas Ltd, the implementation of the project and its financing, the NAO refers back to the terms of reference by way of overall conclusion.

The Selection Process

14.2.2 The NAO was specifically requested to review the process of selection leading to Government’s award of contracts relating to the construction of a power station and the supply of electricity to Enemalta to the ElectroGas Consortium and determine whether the selection was diligently made and based on the principles of good governance. The selection process was undertaken through the issuance of an EoIC, duly followed by an RfP.

- 14.2.3 The main concern identified by the NAO in its review of the EoIC evaluation process was the inconsistent approach adopted by the EoIC Evaluation Committee in its assessment of submissions. In the NAO's opinion, while a number of submissions were appropriately eliminated on sufficient and justifiable grounds, this Office noted that other candidates were deemed eligible to proceed to the RfP despite similar shortcomings. Although the NAO acknowledges that an element of latitude exists in the consideration of diverse proposals, the Office maintains that assessment must be equitable and that evaluation criteria must be uniformly applied across the board. It is in this context that the NAO's concerns regarding the failure of the EoIC Evaluation Committee to ensure that the selection process was fair and impartial to all candidates emerge. Only candidates that were deemed eligible at the EoIC stage were allowed to proceed to the RfP, which consideration accentuates the concerns of the NAO.
- 14.2.4 The NAO considered the RfP document as generally well structured, appropriately defining the intended project and providing the required basis for eligible parties to bid. Other positive noteworthy aspects of the RfP were the inclusion of the draft agreements, the clear definition of selection criteria and respective weightings, as well as a structured clarification process.
- 14.2.5 Notwithstanding this, the NAO noted shortcomings, mainly relating to major changes effected during the RfP clarification process. These changes were not considered as clarifications by the Office but the introduction of new concepts, specifically the SSA, or substantial revisions to existing provisions, particularly in relation to the take-or-pay obligation, which effectively shifted risk from the selected bidder to Enemalta and/or Government. Through the SSA, Enemalta's obligation to purchase electricity and gas from the selected bidder would be assumed by Government should certain circumstances, where Enemalta is unable to honour its commitments, arise. Not only was security of revenue ensured through the SSA, as the significant revision of take-or-pay provisions also guaranteed a minimum revenue to the selected bidder. Through this provision, Enemalta committed to purchase, on a take-or-pay basis, 85 per cent of the annual contract power in terms of the PPA and 85 per cent of the annual contract quantity in terms of the GSA. When issued, the RfP included a take-or-pay obligation limited to 65 per cent of the GSA annual contract quantity.
- 14.2.6 The NAO is of the understanding that while the take-or-pay provisions secured a minimum revenue to the selected bidder, the SSA further guaranteed that Government would replace Enemalta in circumstances where the latter could not honour its obligations. These major changes, at the clarification stage in the RfP process, were deemed by the Office as a shortcoming in terms of the governance of the procurement process. While all bidders were informed of these developments, the significance of these changes and their timing drew the NAO's concern, as the nature of the contractual relationship that was to be entered into was intrinsically revised, drastically reducing the risk to revenue for the selected bidder. Instead, this risk was transferred to Enemalta and Government, now required to purchase 85 per cent of the annual contract quantity, be it power and gas, irrelevant of requirements. In addition to considerations relating to risk, in the NAO's opinion, it was in Enemalta's interest to disclose all conditions favourable to prospective bidders in order to encourage competitive tension in the RfP, with relevant implications on value for money.

- 14.2.7 Aside from concerns identified with regard to the RfP call, the NAO noted various shortcomings in the RfP evaluation process despite certain positive aspects. The RfP evaluation process was generally well managed and structured, with different stages of evaluation assigned to distinct committees whose responsibilities were clearly delineated. By the deadline of the RfP, three bids were received by Enemalta, namely those by the ElectroGas Consortium, the Endeavor Consortium and the Yildirim Consortium. It is debatable whether the competitive tension that Enemalta intended to foster through this procurement process was achieved or otherwise, as selection was ultimately restricted to one of two bids.
- 14.2.8 A major concern identified by the NAO at the RfP stage of evaluation related to the lack of appropriate due diligence undertaken. While the Office acknowledges that an element of due diligence, comprising basic Internet-based searches, was carried out at the EoIC stage, the EoIC Evaluation Committee deemed it imperative that a rigorous due diligence be undertaken at the RfP stage. Notwithstanding this, the NAO noted no indication that a comprehensive due diligence review of the two qualified bidders was undertaken during the RfP evaluation process. Enemalta contended otherwise, maintaining that a due diligence process had in fact been carried out on the ElectroGas Consortium and the Endeavor Consortium based on the methodology proposed by its advisors, which focused on financial and technical considerations.
- 14.2.9 Notwithstanding that claimed by Enemalta, the NAO is of the opinion that the due diligence undertaken was insufficient and only partially addressed the risks associated with a project of this magnitude. While the consideration of technical-related matters was adequate, with verifications appropriately extended to include downstream partners, other aspects of the due diligence process were lacking. The financial aspect of the due diligence process was not sufficiently robust and deemed inadequate by the Office given the materiality of the project. The NAO noted instances of reliance, at RfP stage, on the due diligence undertaken by the EoIC Evaluation Committee, when this was carried out in a very preliminary manner on the assumption that an in-depth verification would be carried out at RfP. Other aspects that remained inadequately addressed in the due diligence undertaken related to governance and control checks, again reliant on the initial basic assessment undertaken at EoIC. Verifications relating to fraud, bribery and corruption, internal controls, risk management considerations, ethical conduct and other governance issues did not form part of the due diligence carried out. The Office is of the opinion that consideration in terms of these aspects would have strengthened the scrutiny undertaken.
- 14.2.10 Following the general concerns identified by the NAO with respect to the RfP, focus is now placed on the stage-specific conclusions arrived at by the Office. The Stage 1 Evaluation Committee deemed the bids submitted by the ElectroGas Consortium and the Endeavor Consortium as materially complete despite shortcomings identified. The NAO concurred with the Committee; however, noted that the Committee only sought technical and legal advice with respect to the bid submitted by the ElectroGas Consortium despite similar shortcomings evident in the bid by the Endeavor Consortium.

14.2.11 The Stage 2 Evaluation Committee noted multiple instances of shortcomings in terms of adherence to minimum requirements, ranging from outright non-conformity to minor deviations. The NAO considered the decisions by the Committee in establishing matters that were to be confirmed by bidders in terms of material compliance and others that were to be addressed in the event of selection as the preferred bidder, as unclear. The Committee referred the most significant deviations identified to the Programme Review Board. These included reservations to the Transaction Agreements noted by both bidders, delays in the proposed completion schedule by the Endeavor Consortium, and a €20,000,000 shortfall in the investment required by the ElectroGas Consortium. Notwithstanding the referral of matters relating to both bids to the Programme Review Board, the NAO noted that the Committee only referred matters for legal consideration with respect to the submission by the ElectroGas Consortium. The Committee recommended that both bids were to proceed to the ensuing stages of evaluation despite the instances of non-compliance with the minimum requirements. While cognisant of the shortcomings identified, the Office acknowledges that the options available to the Committee were limited and, in the circumstances, deemed the rectification of deviations from the minimum requirements at a later stage as reasonable.

14.2.12 Stage 3 of the RfP evaluation process sought to assess the additional technical, commercial and financial capabilities of the bidders, and was assigned a weighting of 20 per cent of the overall mark. The NAO considered the criteria utilised in the assignment of marks as well designed, contributing towards the elimination of subjectivity. While the Office generally agreed with the marks allocated, there were a few instances where the NAO disagreed with the marks assigned. Despite the inconsistencies noted, this Office is of the understanding that these cases bore no significant impact on Stage 3 of the evaluation process and no effect on the final outcome of the selection process.

14.2.13 A comparison of the bid price and terms put forward by the ElectroGas Consortium and the Endeavor Consortium was undertaken at Stage 4 of the RfP evaluation process, which was assigned a weighting of 80 per cent of the overall mark. The criteria utilised in the evaluation of the bids were specified in the RfP which, in the NAO's opinion, ensured an element of transparency and fairness. The NAO is of the opinion that the financial model utilised in the evaluation was a valid tool for the adjudication of bids, allowing for the monetisation of the project over its lifespan through the synthesis of diverse variables into one comparable rate. The Office reviewed the inputs plugged into the model by the Stage 4 Evaluation Committee and confirmed their accuracy with the corresponding bid forms and clarifications. In addition, the NAO verified that the model calculations were uniformly applied in both bids, which provided an element of assurance with respect to Stage 4 of the evaluation process.

14.2.14 Notwithstanding this, the NAO noted a few instances where the model mechanics were adjusted by the Stage 4 Evaluation Committee following submissions by both Consortia that did not fit the structure of the financial model and the structure specified in the bid forms. The Office simulated the impact of the changes on the final price by modelling different scenarios and established that the changes bore no significant effect on the outcome of this stage of

evaluation. Whether Enemalta was to allow for adjustments to be made to the model remains a moot point, and it is in this regard that the NAO maintains an element of reservation. The NAO noted cases where submissions by bidders were revised following clarifications sought by the Committee and other instances where bid parameter values were changed following the Committee's insistence that information be submitted in the correct format. Despite the instances of changes to submissions by the bidders effected during Stage 4 of the RfP evaluation process, this Office concluded that these bore no significant impact on the outcome of this stage of the evaluation process and ultimately were of no consequence to the outcome of the selection process.

14.2.15 Finally, the NAO's attention was drawn to the possible conflict of interest of the Stage 4 Evaluation Committee Team Leader. More specifically, the NAO noted that the Team Leader was the Managing Partner of Nexia BT, which firm was the auditor of GEM Holdings Ltd, one of the shareholders of the ElectroGas Consortium. This Office ascertained that a declaration of impartiality was signed by the Stage 4 Evaluation Committee Team Leader prior to the evaluation process and established that all members of the various RfP Evaluation Committees were aware of the bidders shortlisted at the EoIC stage prior to the signing of the declaration. It was in this context that the NAO sought to determine whether Nexia BT was the auditor of GEM Holdings Ltd at the time of adjudication of bids, as this would have been in clear breach of the declaration of impartiality. Queries to this effect were made with GEM Holdings Ltd and Nexia BT. The parties informed the NAO that Nexia BT were appointed auditors on 25 April 2014, which implied that the engagement of the auditors of GEM Holdings Ltd occurred after the conclusion of the RfP evaluation. An engagement letter to this effect was provided by GEM Holdings Ltd to this Office. The NAO sought to corroborate that stated with the Malta Financial Services Authority (MFSA). However, the MFSA indicated that specific information regarding the date of appointment of auditors was not available as companies were not required to inform the MFSA of the appointment of the first auditors.

14.2.16 Stage 5 of the RfP evaluation entailed the aggregation of the scores arrived at by the Stage 3 and Stage 4 Evaluation Committees, which was to establish the Preferred Bidder and the Reserve Bidder. The NAO noted that the weighting as determined in the RfP was correctly applied to the marks obtained at Stage 3 and Stage 4 of the evaluation. This Office acknowledges that the outcome of the Stage 5 evaluation was referred to the Programme Review Board for its consideration, hence bringing the RfP evaluation process to a close, with the ElectroGas Consortium proposed as the Preferred Bidder.

Financial Standing of the ElectroGas Consortium

14.2.17 As part of the terms of reference, the NAO was requested to ascertain whether documentation indicating the financial standing of each company forming part of the ElectroGas Consortium was sought and whether these documents indicated the risks identified by Gasol's auditors. In addition, the NAO was to establish whether Government was aware of this information, whether this was disregarded, or if unaware, why Government failed to request this information. It is

to be noted that, initially, the members of the ElectroGas Consortium were Gasol plc, GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA.

14.2.18 In its review of the EoIC and the RfP, the NAO noted that information relating to the financial standing of companies forming consortia was requested. In the EoIC, specifically in terms of the assessment of credit worthiness, candidates were required to demonstrate and provide evidence to substantiate their capability to source appropriate finance. Candidates were to demonstrate a degree of credit worthiness or robust capital to back the project and, in this context, were to provide evidence of a minimum of shareholders' funds of €150,000,000 and an appropriate credit rating from a reputable credit rating agency or a letter of support from a reputable bank of their financial standing. According to the EoIC evaluation report relating to the submission by the ElectroGas Consortium, the required threshold of shareholders funds exceeded the stipulated €150,000,000 and evidence documenting the Consortium's credit rating in excess of BBB- was submitted. The Consortium's reliability was also supported by a bank letter of support.

14.2.19 The assessment of the financial standing of the members of bidders at the RfP stage built on that undertaken in the EoIC. To this end, a maximum of 20 points could be allocated to bidders for indicators of financial strength over and above the EoIC threshold criteria in Stage 3 of the RfP evaluation. Financial strength was to be measured in terms of the credit rating of the lead member and any additional experience of the financial adviser. In the case of the ElectroGas Consortium, the Consortium failed to secure any marks for the sub-criterion relating to the credit rating of the lead member, while obtaining full marks for additional experience of the financial adviser. In effect, when one considers that Stage 3 of the RfP was assigned a weight of 20 per cent of the overall mark, and the sub-criterion utilised in determining the financial strength of bidders assigned a weight of 20 per cent, then the maximum marks that could be awarded in this respect was four out of a total of 100. The ElectroGas Consortium obtained one mark out of the possible four. This renders evident that the assessment of financial strength bore an insignificant impact on the outcome of the RfP and once candidates were deemed eligible at the EoIC stage, the financial strength or otherwise of a bidding consortium was rendered irrelevant. The NAO maintains that the assessment of the financial standing of bidders at the RfP stage was inadequate.

14.2.20 In reply to queries raised by the NAO, Enemalta indicated that all the financial statements of the members of the ElectroGas Consortium were reviewed. In all cases, a clean opinion on the financial statements of the sponsors was given. This was with the exception of Gasol plc, in which case an emphasis of matter was raised. Although a potential situation for a going concern issue was highlighted, unless certain commercial contracts were concretised, the RfP evaluation committee took a view that the submission made by the Consortium was still admissible. Enemalta contended that this view was based on the premise that the submission by Gasol plc had no influence on the commercial and technical criteria that were to be fulfilled for the purpose of completing the project as these criteria were fulfilled by the other members of the Consortium. Furthermore, Gasol plc did not qualify as an insolvent company, and hence was

not excluded from participation, since the financial position presented at evaluation recorded a positive net asset value. In addition, Socar Trading SA had provided a letter of commitment to cover the equity contribution of Gasol plc and a letter from the banks had been submitted confirming willingness to support the project.

14.2.21 Despite that stated by Enemalta, a review of the evaluation process by the NAO confirmed that these concerns were not considered during the adjudication of bids. The Office reviewed the financial statements of Gasol plc submitted by the ElectroGas Consortium in respect of the RfP. Excerpts of the financial statements for 2010, 2011 and 2012, submitted as part of the bid by the ElectroGas Consortium, clearly indicated the existence of a material uncertainty that cast doubt on Gasol plc's ability to continue as a going concern, a risk amply identified by the auditors of Gasol plc.

14.2.22 The attention of the Stage 2 Evaluation Committee was certainly drawn to this situation as it acknowledged that Socar Trading SA had provided a letter of commitment to cover the equity contribution of Gasol plc. The NAO is of the opinion that, although not qualified, the financial statements should have raised significant concern for the Stage 2 Evaluation Committee with respect to the role of Gasol plc in the Consortium. Queries addressed to the Chair RfP Evaluation Committee as to whether this information was disregarded during evaluation were refuted. The Chair RfP Evaluation Committee maintained that technically, Gasol plc was not legally and financially insolvent at the time of evaluation. In addition, the Chair RfP Evaluation Committee noted that there was no area where Gasol plc bore any influence on the evaluation process. Notwithstanding that stated by the Chair RfP Evaluation Committee, the NAO maintains that the Stage 2 Evaluation Committee too readily dismissed concerns that the audit reports should have raised and highlighted flaws in the design of the RfP, in that the departure of the lead member had no impact on the outcome of evaluation. Furthermore, justification that Socar Trading SA mitigated such risks through its commitment to cover the equity contribution of Gasol plc raise further doubt as to the utility of Gasol plc as the lead member of the ElectroGas Consortium.

Financing of the Project

14.2.23 Aside from the assessment of the financial standing of the ElectroGas Consortium, the NAO was requested to determine whether Government and/or Enemalta had sufficient and documented proof that the Consortium had the necessary financing to undertake the project as required in the EoIC and the RfP.

14.2.24 Cited in the EoIC was that submissions were to include an outline of the expected SPC business plan for at least the duration of the Energy Contracts, which was to include estimates for EPC costs in relation to the GSA and the PPA. Also to be indicated were the financing structure, operation and maintenance costs and other applicable costs related to the project. The report prepared by the EoIC Evaluation Committee indicated that the project proposed by the ElectroGas Consortium was to be mainly financed through loans with a gearing ratio of 80 per

cent. The Committee acknowledged that the Consortium was commercially sustainable and able to finance and manage the whole value chain of the project.

14.2.25 Detailed information regarding project financing, the finance data requirements for each bid, as well as accounting and fiscal considerations was required in the RfP. Bidders were to submit detailed financial information in order for Enemalta to ensure that they could deliver the project on a commercially sound and financially robust basis. Bids were to include a financial model, projected financial statements and relevant supporting information. Moreover, Enemalta sought to ascertain that bidders had access to the necessary funding and that, by the Effective Date, had secured equity funding and financing facilities to meet all the costs associated with the project throughout its lifetime. Funding proposals were to be supported by a letter from the bidder’s financial adviser indicating that these were realistic and achievable. In cases where funding was reliant on debt funding or equity, a letter of support from funders was to be procured by the bidders. Bidders were also to provide financial projections for the full duration of the project term in the form of a financial model. In addition, details regarding financing arrangements were sought by Enemalta from each bidder for each class of debt finance to be raised and major type of equity. Moreover, bidders were to submit a complete funding plan schedule, which was to include an indication of the total funding required, covering capital and development costs, start-up costs, capitalised interest, finance and legal costs, working capital and decommissioning costs.

14.2.26 As attested from the preceding paragraph, the documentation requested at the RfP stage with respect to project financing was comprehensive. The NAO reviewed the submission by the ElectroGas Consortium and ascertained that this was generally compliant with the stipulated requirements. Notwithstanding this, instances of non-compliance were noted. For example, the Stage 2 Evaluation Committee remarked that the wording of the banks’ letter of support fell short of assuring a complete commitment to proceed with the funding of the project. This was in contrast to the RfP requirement as stipulated in the bid form. While the Committee indicated that the bidder was to qualify only if the necessary financing was in place, it contradictorily claimed that no action was required on this matter.

14.2.27 Of greater concern to the NAO was a deviation noted by the Stage 2 Evaluation Committee from the financial requirements stipulated in the RfP. In its bid, the ElectroGas Consortium had submitted letters of support that totalled €350,000,000, that is, €20,000,000 short of the total long-term funding specified. The NAO noted that, according to documentation submitted by the Consortium, the €20,000,000 shortfall related to upfront costs such as bank funding arrangement fees, pre-commissioning costs and insurance. However, the bid report drawn up by the Stage 5 Evaluation Committee was incongruent with this understanding. The bid report attributed the €20,000,000 shortfall to additional costs that were to be incurred by the Consortium following a last minute concession by Enemalta to allow operation of the power plant on open cycle mode for the first six months of operations. Despite these shortcomings, noted in the bid report was that the Stage 2 Evaluation Committee considered the Consortium as satisfying the commercial requirements subject to rectification by the effective date. The

NAO requested Enemalta to submit documentation put forward by the ElectroGas Consortium linking the €20,000,000 shortfall to the extended operation of the power plant in open cycle mode. In reply, Enemalta stated that all financing decisions were sanctioned by the Board of Directors of ElectroGas Ltd, specifically referring to minutes of a meeting held on 14 April 2015, a date incongruent with the RfP process underway in 2013. The NAO is of the opinion that explanations submitted by Enemalta failed to substantiate that cited in the bid report, that is, that the €20,000,000 shortfall was linked to the extended operation of the power plant in open cycle mode. The Office contends that the shortfall in financing should have raised concerns of the RfP Evaluation Committees regarding the ability of the ElectroGas Consortium to finance the project.

14.2.28 Similarly anomalous was the source of funding that was to be provided by Gasol plc. Of the total project cost, 20 per cent was to be funded through shareholder loans, amounting to €70,000,000, which was to be apportioned among the members of the Consortium. However, in its equity funding letter of commitment, Socar Trading SA indicated its ability and willingness to commit €40,000,000 as contribution, partly on its behalf and partly on behalf of Gasol plc, reflecting their respective stake in the Consortium. In its analysis, the Stage 2 Evaluation Committee commented that the bidder was to proceed subject to having all the required financing in place, and in this respect noted that the bidder was to confirm compliance with such a requirement. The NAO maintains that this matter ought to have raised concern regarding the ability of Gasol plc to contribute towards the financing of the project, more so when one considers that Gasol plc was the lead member of the Consortium. This particular failing on the part of the Committee is amply addressed in the preceding paragraphs.

The Government Guarantee: Fairness and Regularity Considerations

14.2.29 Another aspect that the NAO was requested to review related to whether Government created favourable conditions for the ElectroGas Consortium, to the detriment of other companies that could have had interest in this project, when providing a state guarantee for a bank loan. In addition, the Office was to ascertain whether the guarantee was in breach of Government's financial regulations.

14.2.30 Government's involvement in assisting ElectroGas Ltd secure financing for the project first emerged in mid-2014, when it became evident that for ElectroGas Ltd to obtain funding the SSA was to be in effect. However, Government decided that for the SSA to be entered into, this was to be cleared by the EC as not constituting state aid. Until the EC's decision in this regard, Government consented to provide a government guarantee to assist ElectroGas Ltd in securing financing. To this end, in December 2014, ElectroGas Ltd entered into a €110,000,000 Interim Bridge Loan Facility Agreement with BoV to finance its project. Essential in obtaining the Facility was the Government Guarantee subsequently entered into between Government and BoV in December 2014. The government supported amount was €88,000,000. In May 2015, the Facility was extended from €110,000,000 to €137,500,000, with a corresponding increase of €22,000,000 in the Government Guarantee effected shortly thereafter.

14.2.31 By mid-2015, the EC had not yet issued its decision regarding whether the SSA constituted state aid, which in turn prohibited its finalisation. In this context, the €137,500,000 Interim Bridge Facility was refinanced and replaced by a longer term facility entered into in July 2015, when ElectroGas Ltd, various banks and Government finalised a €450,000,000 Bridge Loan Facility Agreement. In conjunction, in July 2015, Government, BoV and ElectroGas Ltd entered into another Government Guarantee for €360,000,000. However, prior to signing of the €450,000,000 Interim Bridge Loan Facility and the Government Guarantee, Government and ElectroGas Ltd, together with other parties, entered into a number of agreements that were to regulate the transfer of ElectroGas Ltd to Government should certain circumstances materialise. These circumstances included instances of possible default by ElectroGas Ltd, in the event of which Government would acquire the Company with all of its assets and liabilities.

14.2.32 The NAO established that no reference was made to a possible security of supply agreement or any other form of state guarantee by Enemalta in the EoIC and the RfP. Notwithstanding this, it was evident that discussions were held by the Programme Review Board relating to the possible issuance of a government guarantee in July 2013, with the RfP already published. The Board decided that no reference was to be made to a possible government guarantee.

14.2.33 A request for clarification submitted by the Endeavor Consortium triggered further discussions within the Programme Review Board, with a guarantee on the basis of security considered as the most favourable option. In effect, such a guarantee ensured that if Enemalta was not in a position to pay its dues, Government would purchase the electricity on the basis that this was in the national interest. This understanding assumed a more definite form during a Programme Review Board meeting in August 2013, wherein the Board proposed a security of supply agreement for the term of the contract, which would guarantee payment by Government should Enemalta default on payment.

14.2.34 Although discussions regarding security of supply had been ongoing for some months, the NAO established that first reference to the SSA by Enemalta brought to the attention of the bidders was made during the bidders' conference, wherein the concept of security in terms of the operation of the facilities and the generation of revenue was outlined. More specific reference to this was made through an amended draft IA circulated to bidders on 5 September 2013; however, it must be noted that the SSA was not made available to the bidders, but merely referred to in the draft IA. In fact, the Soffimat Consortium specifically requested a copy of the SSA; however, Enemalta stated that this Agreement was to be executed between the SPC and Government, and that the Agreement would provide that Enemalta's obligation to purchase electricity and gas would be assumed by Government in specific circumstances. This clarification was issued by Enemalta on 12 September 2013, a few days before the bid submission deadline set at 20 September 2013.

14.2.35 The NAO is of the understanding that the SSA provided assurance that Government would step in instead of Enemalta in circumstances where the latter could not honour its obligations. This substantial change, introduced at such a late stage in the RfP process, was deemed by

the Office as a significant shortcoming in ensuring the required fairness of the procurement process. While the NAO acknowledges that all bidders were informed of such a development, the nature of the change and its proximity to the bid submission deadline were, in the Office's opinion, inappropriately managed, for this substantially altered the contractual relationship between the selected bidder and Enemalta. The Office is of the understanding that it was in the interest of Enemalta to foster competitive interest in the RfP and disclosing the guarantee of revenue assured through the SSA at the outset would have contributed in this respect.

14.2.36 In sum, the NAO is of the opinion that favourable conditions were created for bidders still involved in the tender process at its latter stages through the introduction of provisions that substantially altered the nature of the tender, rendering it more advantageous to the bidders. Although the documentation made available to this Office did not indicate that the conditions were created specifically for the ElectroGas Consortium, the NAO notes that it was the Consortium that ultimately benefitted from their introduction.

14.2.37 The NAO also sought to establish whether the Government Guarantee was in line with applicable financial regulations. The Office noted that, at the time under review, no specific legislation regulated the issue and management of government guarantees. Instead, direction with respect to government guarantees was provided by the 'Guidelines for the Granting of Government Bank Guarantees' and the 'Manual of Procedures on the Issue, Extension, Cancellation and Compilation of Data on Letters of Guarantee/Letters of Comfort' issued by MFIN in June 2013.

14.2.38 According to the Guidelines, prior to its approval for a bank loan by a government entity, MFIN was to consider various aspects, including the government (guaranteed) debt in the context of the Maastricht criteria and state aid regulations, whether the loan was to finance capital programmes required to improve the operations of the entity concerned and to enhance its assets, and whether the government guarantee was required in the national interest. The Manual outlined procedural considerations that were to be followed in matters relating to government guarantees. Of note was that any request from a government entity for the issue of a letter of guarantee or a letter of comfort was to be referred to the SAMB for its comments and recommendations, which requirement was adhered to in this case.

14.2.39 Having reviewed the Guidelines applicable at the time of issue of the Government Guarantees to ElectroGas Ltd, the NAO noted that no reference was made to the provision of this form of security to private entities. In fact, the Guidelines solely referred to a scenario where a government entity required financial security, through a government guarantee, to secure a bank loan. The Office confirmed this understanding through the review of guarantees in effect between 2013 and 2017, where Government had an exposure. Immediately evident was that all guarantees issued by Government in this respect, bar that to ElectroGas Ltd, related to entities that were either wholly owned by Government or where Government held a majority shareholding. Although the Office acknowledges that the guarantee was intended to support a project that was in the national interest, in the NAO's understanding, the guarantee provided

by Government to ElectroGas Ltd was irregular in terms of the Guidelines applicable at the time, for the Guidelines did not contemplate assistance provided directly to private enterprises by way of security.

14.2.40 Although the Government Guarantee was not called and was released in December 2017, when ElectroGas Ltd repaid the bridge loan facility and secured long-term financing, possible and contingent on the execution of the SSA among others, the NAO maintains serious reservations regarding the risk that Government was exposed to when the guarantees were in effect. The Office is of the opinion that such a situation could have been avoided through appropriate planning, with referral to the EC undertaken at the earliest, possibly prior to the issuance of the EoIC and the RfP. It is in view of the serious repercussions that could have materialised had the guarantees been called that the NAO advocates that any measure that could have further mitigated the issuance of the Government Guarantees and the duration within which they were in effect should have been considered.

Withdrawal of Gasol plc from the ElectroGas Consortium

14.2.41 The NAO was also requested to review the process through which Gasol plc was allowed to withdraw from the ElectroGas Consortium and to determine whether this was in line with the procedure ordinarily applied in similar cases. With respect to the latter point, the Office is of the understanding that reference to similar cases draws concerns relating to the validity of comparison, for the assessment of each case depends on the particular circumstances and facts that define it, which invariably vary. Rather than the review of similar cases, the NAO undertook to analyse whether the withdrawal of Gasol plc was in line with applicable regulations.

14.2.42 The Office established that on 16 July 2015, three months after the signing of the PPA, the GSA and the IA, ElectroGas Ltd submitted correspondence to the Minister for Energy and Health and to the Executive Chair Enemalta, informing them that Gasol plc was facing issues in raising further equity to continue supporting the project. The other shareholders, that is, Siemens Project Ventures GmbH, Socar Trading SA and GEM Holdings Ltd, jointly decided to raise their equity and replace Gasol (Malta) Ltd. To this end, ElectroGas Ltd proposed a change in the shareholding of the Company from the current structure where Gasol (Malta) Ltd and GEM Holdings Ltd each held 30 per cent, while Siemens Project Ventures GmbH and Socar Trading SA each held 20 per cent, to a new formation where GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA all held an equal shareholding of 33.333 per cent. In this respect, ElectroGas Ltd sought the consent of the MEH and that of Enemalta for this change in shareholding.

14.2.43 To this end, following legal advice obtained, the Permanent Secretary MEH and the Executive Chair Enemalta agreed to commission an ad-hoc committee to carry out a technical re-assessment of the bid by the ElectroGas Consortium in view of the proposed changes in shareholding structure. A committee, referred to by the NAO as the Gasol Evaluation Committee, was appointed. The Committee was tasked to assess whether the exit of Gasol plc

would negatively affect the ElectroGas Consortium's compliance with the criteria of the RfP and the resultant scoring by the RfP Evaluation Committees, which task was concluded on 21 July 2015.

14.2.44 The Gasol Evaluation Committee considered that the exit of Gasol plc could have only bore an impact on the RfP Stage 2 and Stage 3 evaluations, which related to the establishment of the minimum requirements and additional capabilities, and limited its review in this regard. In its assessment of the minimum requirements, the Committee sought to establish whether ElectroGas Ltd would continue to qualify under the minimum requirements criteria set out in the RfP given the change in shareholding. The Committee concluded that the exit of Gasol plc from the ElectroGas Consortium did not negatively impact compliance with the criteria relating to minimum requirements assessed at Stage 2 of the RfP evaluation or the resultant scoring of the Consortium by the RfP Stage 3 Evaluation Committee in relation to additional capabilities.

14.2.45 The NAO reviewed the basis of assessment undertaken by the Gasol Evaluation Committee with respect to the RfP Stage 2 evaluation of compliance with the minimum requirements. In the Office's opinion, the conclusion arrived at by this Committee was reasonable and valid, with the departure of Gasol plc having no impact on adherence to the minimum requirements. The Office also considered the basis of assessment by the Gasol Evaluation Committee and agreed with the conclusion reached, that is, that the departure of Gasol plc would not have resulted in changes to the marks obtained by the ElectroGas Consortium in the RfP Stage 3 evaluation. The only criterion where marks depended solely on the lead member, at the time Gasol plc, was the credit rating of the lead member, which was a sub-criterion of the determination of financial strength. In this respect, the ElectroGas Consortium was awarded no marks by the RfP Stage 3 Evaluation Committee. It is on this basis that the NAO confirms that the exit of Gasol plc bore no impact on the evaluation of additional capabilities.

14.2.46 Having considered that the departure of Gasol plc had no influence on the outcome of the RfP Stage 2 and Stage 3 evaluation, it is not clear to the NAO what evident advantage the ElectroGas Consortium identified in nominating Gasol plc as its lead member. More so when the exit of Gasol plc occurred so soon after the signing of the Transaction Agreements.

14.2.47 On 21 July 2015 and 22 July 2015, the Permanent Secretary MEH and Enemalta, respectively, informed ElectroGas Ltd that there was no objection to the revised composition as proposed, subject to any contractual or other obligations in relation to third parties and adherence to the project schedule. Subsequently, on 28 July 2015, ElectroGas Ltd gave notice in accordance with Section 120(3) of the Companies Act (Cap. 386) that an aggregate of 3,000 ordinary shares, with a nominal value of €1 per share, had been transferred on 22 July 2015 by Gasol (Malta) Ltd to Siemens Projects Ventures GmbH, GEM Holdings Ltd and Socar Trading SA.

14.2.48 The NAO noted that, at the time the transfer of shares was made, the only contract regulating the parties in this regard was the IA, which stipulated specific restrictions on the leasing and transfer of shares or assets. The IA regulated that, after the Final Effective Date, ElectroGas

Ltd was to ensure that until at least three years after the Open Cycle Energy Delivery Date, the initial shareholders retained their respective percentage shareholding, whether directly or through a fully-owned subsidiary.

14.2.49 In the NAO’s understanding, the IA only catered for transfers of shares taking place after the Final Effective Date, that is, after financial closing was achieved in early January 2018. The transfer of shares from Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd took place on 22 July 2015, which was well before the Final Effective Date and therefore not regulated by the IA. At the time of the transfer of shares, this was only regulated by the Memorandum and Articles of Association of ElectroGas Ltd. Before the transfer of shares on 22 July 2015, that is, on 23 April 2015, the shareholders of ElectroGas Ltd approved a resolution whereby the transfer of shares and any amendments to the Articles would require the unanimous consent of all shareholders and the written consent of Government.

14.2.50 Of relevance is that, following the change in the Articles of Association, on 27 July 2015, Enemalta and ElectroGas Ltd entered into the Pre-Financial Closing Share Transfer Restriction Agreement. The Agreement was to be binding on the parties from the date of its execution until the Final Effective Date and was to regulate the transfer of shares prior to Financial Closing, this is, January 2018.

14.2.51 Having considered the developments leading to the transfer of shares from Gasol (Malta) Ltd to the other shareholders of ElectroGas Ltd, the NAO is of the understanding that this transfer was not in line with the prevailing contract in force at the time of the transfer, that is 22 July 2015. At this point in time, the only provisions regulating transfers of shares were those stipulated in the IA, which allowed for such transfers to take place after Financial Closing, that is, January 2018. In the NAO’s opinion, the consent provided by the MEH and Enemalta was in breach of the provisions of the IA. Although the parties sought to regularise this matter through the Pre-Financial Closing Share Transfer Restriction Agreement, the application of this Agreement was only valid and binding between the parties from the date of its execution, that is, 27 July 2015.

14.2.52 Aside from the regularity of the change in shareholding of ElectroGas Ltd in terms of the contractual framework that regulated its relationship with Government/Enemalta, the views of the DoC regarding the applicability of provisions regulating changes in consortia post tender award were sought by the NAO. In addressing queries raised, the DoC referred the matter to Enemalta. In its reply to the DoC, Enemalta maintained that the change in composition did not require the prior consent from the DoC, in view of the fact that the PPA and GSA procurement process were not governed by Public Procurement Regulations. Enemalta sustained that the procurement process for the long-term PPA and GSA was not governed by Directive 2004/17/EC, in force at the time, by virtue of, among others, Article 26 of the Directive and the corresponding regulations implementing it into Maltese law. Article 26 provided that the Directive did not apply to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in the production and supply of electricity. Enemalta stated that since it is active in the production and supply of electricity, and that the award of the PPA

and GSA to ElectroGas Ltd was made in the context of the provision of electricity, then the Directive was not applicable. Hence, Enemalta argued, the General Rules Governing Tendering and the General Conditions of Contract were not relevant. This position was reflected in the decision by the EC regarding state aid. The DoC informed the NAO that it subscribed to that stated by Enemalta.

14.2.53 While the NAO acknowledges that the position adopted by Enemalta was in line with applicable legislation, the legal framework that regulates the procurement of electricity and gas does not specifically address circumstances involving changes in the composition of the winning bidder. This lacuna provides for different interpretations as to what actually constitutes a change in bidders/contractors. Case law cited in this respect is ambivalent, largely determined by the specific circumstances of each case, which varied according to whether the change was considered as the internal re-organisation of a contractual partner or an actual change of the contract partner. Although it is not the NAO's intention or remit to pronounce itself on the legal implications of the change in shareholding of ElectroGas Ltd, it is this Office's understanding that the departure of Gasol plc was in breach of the contractual obligations in force at the time.

Contractual Framework: Good Governance Considerations

14.2.54 The NAO was requested to review the contracts entered into by Government and/or Enemalta for the purchase of electricity from ElectroGas Ltd and determine whether the contracts were consonant with the principles of good governance, including transparency, viability and value for money. The Office is of the understanding that the contracts entered into were largely determined by the procurement model outlined in the EoIC and crystallised in the RfP and it is in this sense that matters of good governance must be understood.

14.2.55 Enemalta designed its model of procurement as centred around two supply contracts, that is, the PPA and the GSA. Initially, through the EoIC, Enemalta considered the submission of bids for partial solutions, allowing bidders to limit their interest to either of the supply contracts. However, in the RfP, Enemalta restricted bidders to submissions that encompassed complete solutions for the supply of power and gas through the PPA and the GSA, respectively.

14.2.56 The NAO sought to establish whether Enemalta's decision to opt for this procurement model was the result of the consideration of other models. According to Enemalta, having established the economic, commercial, technical and environmental viability of the project, attention was directed at how the project was to be implemented and financed. Enemalta indicated that several options were considered, namely:

- a. the internal development of the project by Government and/or Enemalta;
- b. entry into a management agreement with a third party having experience in the LNG industry;

- c. issue of the GSA and internal development by Government and/or Enemalta of the power plant facility;
- d. entry into a tolling agreement, with a third party responsible for the design, construction and operation of the power and gas facilities, and Government and/or Enemalta responsible for the supply of LNG; and
- e. a PPA and GSA.

Enemalta maintained that it was in the context of these options that it was resolved that the most appropriate manner in which the project could effectively be implemented was through the issue of a PPA and a GSA.

14.2.57 Queries regarding the consideration of alternative procurement models were put to the Minister MECW and the Chair RfP Evaluation Committee in his capacity as Programme Director. The Minister MECW indicated that the procurement model was influenced by geographical and economic considerations, with the smallness of the island and a limited market constraining choice in this regard. Moreover, the Minister MECW argued that other models to that implemented would have increased complexity and would have moved away from the concept of risk transfer. Ultimately, the Minister MECW justified structuring procurement through a PPA and GSA by referring to the pre-election proposal and the political imperative to see this project to completion. This view was resonated by the Chair RfP Evaluation Committee, who noted that the decision to resort to this form of procurement model was taken at a political level. Elaborating in this respect, the Chair RfP Evaluation Committee maintained that other models were informally considered; however, any analysis undertaken was conditioned by the precarious financial situation that Enemalta was in at the time.

14.2.58 Despite requests for documentation in support of the options identified by Enemalta, the NAO was not provided with evidence of analysis undertaken prior to the commitment to procure power and gas from one supplier. Enemalta maintained that all options were thoroughly discussed and analysed verbally in internal meetings held, and that the explanations provided to this Office captured the gist of the analysis undertaken and the reasoning leading to the adoption of the PPA and GSA model. Notwithstanding this, the NAO deemed the response submitted by Enemalta outlining the various options as superficial, in that a true comparison of the costs and benefits of the alternatives considered could not be undertaken given the limited information available. Moreover, the proximity of issue of the EoIC to the change in administration renders the due analysis of alternative procurement models as highly unlikely, with the EoIC issued a mere one month after this change. In the absence of documentation rendering evident the consideration of alternatives, the NAO’s concerns regarding the design of the procurement process emerge.

14.2.59 Aside from these concerns, the NAO maintains an element of reservation regarding certain aspects of that stated by Enemalta. With regard to the option involving the development of the project by Government and/or Enemalta, this Office notes that while this option presents

complex contracting and operational activities, Enemalta has experience of matters relating to the procurement, operation and maintenance of plants. While the NAO acknowledges that Enemalta lacks expertise in the sourcing of LNG, it is to be noted that it has considerable experience in the procurement of related fuels. These limitations could have been mitigated through a management agreement, an option conceded by Enemalta. In this Office's understanding, the main limitation to the development of the project by Government and/or Enemalta related to its financing. Although concerns raised in this respect are valid, the absence of detailed analysis, clearly illustrating the costs and benefits of this option of internal development, precludes the Office from forming an opinion, based on facts, in this regard.

14.2.60 Similar shortcomings emerge in assessing a possible tolling agreement, whereby the successful bidder would be responsible for the design, construction and operation of the power and gas facilities, while Enemalta would be required to source LNG supply and deliver it to the operator of the facilities. In the absence of substantiating documentation, the Office is unable to determine the extent of the risks identified under the tolling scenario.

14.2.61 With regard to the scenario whereby Enemalta would develop the power plant facility and separately issue a GSA, Enemalta recognised its expertise in the construction and development of various power plants and that outsourcing the gas supply infrastructure represented a valid option. While concerns relating to the financing of the project persist, again unaided by the absence of any comparative analysis required to assess the various scenarios, the NAO maintains reservations regarding other concerns identified. In the Office's opinion, the shifting of responsibility for the operation of the power plant to a third party comes at a cost and it is in this respect that comparison of this scenario with one where Enemalta retained responsibility for the operation of the plant was not possible as the required analysis was not undertaken. While the Office acknowledges that the separation of the development would have created additional contractual complexities, it must be noted that the present contractual framework is equally complex and the interface risk cited by Enemalta could have been mitigated through a robust contractual framework.

Comparison of Electricity Rates sourced through Delimara 4 and the Interconnector

14.2.62 The NAO was requested to establish whether the rate at which Enemalta purchased electricity from ElectroGas Ltd was more favourable than that procured through the interconnector. To this end, the period April 2017 to June 2018 was reviewed. This Office established that Enemalta procured 931,839 MWh of electricity from the interconnector between April 2017 and June 2018, at a cost of €57,358,113. The average adjusted rate for electricity procured in this respect, which incorporated a scheduling fee of €0.20/MWh, amounted to €61.75/MWh. Although Enemalta incurred an annual service charge of €360,000 and paid €707,740 in imbalance payments in 2017, these were not considered in determining the interconnector rate as information at hand was incomplete.

14.2.63 During the corresponding period, energy delivery charges invoiced by ElectroGas Ltd in respect of Delimara 4 amounted to €111,452,821 and corresponded to 1,411,496 MWh of electricity, which implied an average rate of €78.96/MWh for electricity delivered. Energy delivery payments account for only one element of the expense incurred by Enemalta in obtaining energy from Delimara 4, as for every unit of energy delivered, Enemalta incurs an energy availability fee, which during the period under review amounted to an average rate of €33.43/MWh.

14.2.64 Immediately apparent is the difference in rates, with Delimara 4 costing, on average, €50.64/MWh more than the interconnector when excluding capital costs for the latter. This variance represents a conservative figure, as the NAO did not factor availability costs incurred by Enemalta for energy made available and not delivered. Take or pay deficiency payments were also not considered. Inclusion of these costs would have increased the variance between energy purchased from Delimara 4 and that sourced through the interconnector.

14.2.65 In addition, the NAO identified scope for improvement in terms of when Enemalta decides to effect purchases through the interconnector and to what extent. Correlation analysis of volumes of electricity purchased through the interconnector and corresponding price data indicated that Enemalta purchased greater volumes as the price increased and less volumes as the price decreased, to varying degrees, in 35 out of the 65 weeks reviewed. Simulated scenarios undertaken by this Office indicated the extent of Enemalta's ineffective procurement decisions. A passive buying strategy, whereby the total volume purchased by Enemalta over the 15-month period under review was equally distributed across all hours, would have yielded a marginal improvement on Enemalta's performance. Moreover, had Enemalta limited instances of purchase from the interconnector to the hours when the rate was favourable in comparison to that of Delimara 4, maintaining the same total volume, Enemalta would have registered savings in excess of €10,000,000. While acknowledging the possible impact of technical considerations, the Office is of the opinion that Enemalta ought to utilise a system for the optimisation of purchasing decisions, which would assist in identifying the most advantageous mix of power sources.

Similarities to Pre-election Proposal

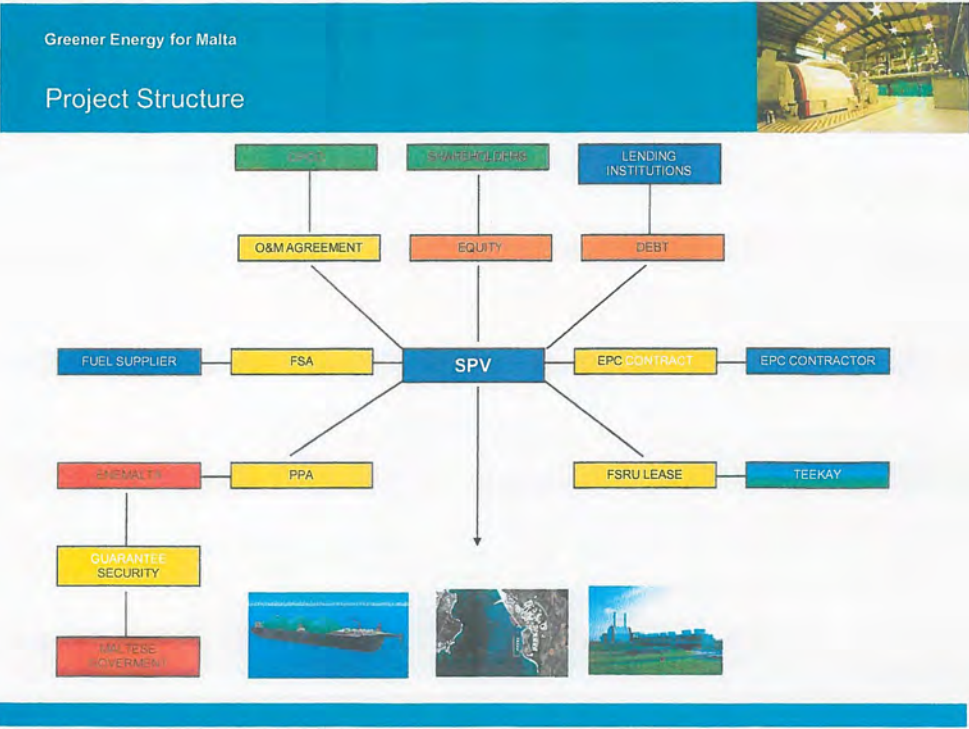
14.2.66 Having considered the overall execution of the procurement and contractual framework, the NAO's attention focused on the additional information brought to the Office's attention by the Leader of the Opposition regarding the similarities that this project bore with a proposal put forward to the Opposition by Gasol plc and GEM Holdings Ltd prior to the 2013 general election. The Leader of the Opposition alleged that the proposal was similar to that proposed by the Partit Laburista in the run up to the general election, was nearly identical to the selected project, and the parties involved in the proposal and those selected were the same. According to the Leader of the Opposition, this implied that prior agreement had been reached with the Partit Laburista before the general election. It was further alleged that the technical specifications for the construction of the power station set by Enemalta were influenced, if

not dictated, by parties who had a direct interest in this contract. In this regard, the NAO was requested to review the project proposal submitted by these parties to the Opposition as part of its investigation.

14.2.67 The proposal referred to centred on bringing low cost electricity to Malta through LNG and reducing carbon dioxide emissions. The consortium was composed of Gasol plc and a group of Maltese investors, one of whom later formed part of GEM Holdings Ltd. The other members of this consortium comprised an international company specialised in power generation and a shipping and maritime group with an LNG fleet. These two companies differed to the members that ultimately formed the ElectroGas Consortium. The proposal entailed the construction of a 400 MW plant fuelled by imported LNG. The output of the proposed plant differed to the demand specified in the EoIC, which ranged from 180 to 220 MWe. Cited in the proposal was that the consortium would provide LNG supply, storage and regasification. All funding, implementation and operational commitments were to be the responsibility of the consortium, while management of the plant was also included as a possibility. Under all circumstances, Enemalta was to remain the grid operator and sole seller and distributor of electricity in Malta.

14.2.68 The proposed set-up envisaged a 20-year plus PPA term, Government to guarantee Enemalta’s contractual performance, fuel and O&M costs passed on to Enemalta, and payment based on capacity made available. This set-up was identical to that effectively entered into by Enemalta with the ElectroGas Consortium. The project structure proposed by the consortium bore considerable similarities to that subsequently adopted. Evident in this regard were the setting up of the special purpose vehicle, the contractual framework – particularly the FSA in lieu of the GSA, the PPA, the O&M and the EPC contracts – the FSRU lease, and the security that was to be provided by Government to Enemalta through a guarantee (Figure 71 refers).

Figure 71: Project structure proposed by a consortium prior to the 2013 general election



14.2.69 According to that proposed by the consortium, the new power plant was to be constructed adjacent to the existing plant at Delimara with the harbour intended to accommodate LNG vessels. Reference was also made to the possible enhancement of the undersea cable linked to Sicily, which could allow for the export of power. With respect to the purchase of LNG, a long-term contract was to be entered into with six to eight cargoes delivered annually, with storage and regasification in a purposely designed FSRU to be located opposite the Freeport Harbour. This set-up was very similar to that sought by Enemalta through the RfP.

14.2.70 The proposed business structure envisaged the consortium to provide all equity investment and arrange all debt. However, in order to secure project financing, a long-term PPA, guaranteed and secured by Government was required. The fuel component was to be linked to international energy prices. Although the consortium was not to have pricing power, it anticipated a 30 to 40 per cent reduction in the price of electricity. Project implementation was established as approximately three years from the financial investment decision.

14.2.71 In the Office's opinion, this proposal bore multiple similarities to the project undertaken by Enemalta. Although the similarities lend credence to the allegations made by the Leader of the Opposition, the NAO cannot comment on whether prior agreement had been reached with the Partit Laburista before the general election and if the technical specifications for the construction of the power station set by Enemalta were influenced by parties who had a direct interest in this contract. The NAO does not have evidence that supports claims made and is further limited by its mandate, which does not extend its review to political parties.

Appendix A - Request by the Public Accounts Committee

30 ta' Lulju 2015

Sur Anthony Mifsud
Awditur Ġenerali
Uffiċċju tal-Awditur Ġenerali
Floriana



Sur Mifsud,

Peress illi:

- L-Enemalta u l-Gvern fit-12 ta' Ottubru 2013 habbru li ntghazel il-*consortium* Electrogas Malta, sabiex jibni *power station* ġdida u jissupplixxi enerġija elettrika lill-Enemalta;
- Il-*consortium* li rebah il-kuntratt kien iffurmat minn Gasol li kellhom 30% tal-ishma, Siemens li kellhom 20% tal-ishma, Socar li kellhom 20% tal-ishma u GEM li kellhom 30% tal-ishma;
- Fi kliem il-Gvern stess, dan il-kuntratt huwa wiehed kruċjali għall-iżvilupp ta' pajjiżna u huwa wiehed mill-akbar kuntratti li qatt għamel il-Gvern ta' Malta;
- **Fil-11 ta' Settembru 2014 ġew ippublikati il-*financial statements* tal-kumpanija Gasol (kopja mhemuza);**
http://www.gasolplc.com/media/31360/gasol_plc_2014_report_accounts.pdf
- F'dawn il-*financial statements*, l-Awdituri ta' Gasol itennu li l-Gasol m'għandiex ir-riżorsi u l-assi neċessarji biex tonora l-obbligi li għandha u li ser ikollha fix-xhur li ġejjin;
- L-istess Awdituri ta' Gasol jgħidu li m'hemmx assigurazzjoni li l-istess kumpanija tista' tiġbor il-kapital neċessarju biex tonora l-obbligi li għandha u/jew li dan il-kapital tista' jgħibu b'termini li jkunu sodisfaċenti għall-kumpanija;
- Il-prinċipji ta' governanza tajba (*good governance*) u *due diligence* jitolbu li fl-għoti ta' kuntratti u *tenders* pubbliċi ikun hemm provvedimenti li jassiguraw li kumpaniji li (a) jew huma falluti jew li (b) huma f'riskju ta' falliment finanzjarju jew li (c) hemm dubju fuq jekk għandhomx is-saħha finanzjara biex jonoraw l-obbligi tagħhom, li dawn ma jinghatawx kuntratti u *tenders* pubbliċi;
- F'każ ta' *consortium*, l-istess prinċipji ta' governanza tajba jitolbu li kull membru tal-*consortium* għandu jkun finanzjarjament b'saħħtu;
- Jeżisti dubju ċar u serju jekk f'dan il-każ ġewx segwiti il-prinċipji ta' governanza tajba meta intgħazel *consortium* li fih hemm kumpanija li skont l-

Awdituri tagħha stess ma tistax tassigura li tkun f'pożizzjoni li tonora l-obbligi li għandha;

U peress illi:

- Aktar kmieni din is-sena gie żvelat fis-*Sunday Times of Malta* illi l-Gvern qed jagħmel garanzija statali sabiex il-*consortium* rebbieh ikun jista' jikseb self minghand il-Bank of Valletta u dan minkejja li din il-garanzija ma ssemietx fid-dokument tas-sejha għall-interess (*expression of interest*) mahrug mill-Enemalta u dan b'dannu għal kull kumpanija ohra li setgħet kienet interessata biex titfa' offerta li kieku kienet taf illi ser tinghata din il-garanzija;
- Fi kliem il-Gvern stess, din il-garanzija hija bla precedent u inoltre, illi jekk jinghataw dettalji fuq din il-garanzija jista' jkun hawn taqlib ekonomiku fil-pajjiż;

U peress illi:

- Fis-sezzjoni *Instructions to Tenders* li jiffurmaw parti minn sejhiet għall-offerti li johroġ il-Gvern, hemm imnizzel li "*All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law*" u dan sabiex jissalvagwardja l-interessi tal-Gvern Malti u it-taxpayer;
- Il-*consortium* Electrogas (Malta) permezz ta' stqarrija għall-istampa datata 24 ta' Lulju 2015, habbar li l-kumpanija Gasol m'għadiex tiffirma parti mill-*consortium* Electrogas (Malta);
- Il-principju ta' governanza tajba jitlob lill-membri kollha ta' *consortium* li rebah proċess għal xogħol tal-Gvern għandhom jibqgħu responsabbli għall-esekuzzjoni tal-proġett anke f'istanzi meta, bħal mhu f'dan il-każ, ix-xogħol m'inghatax b'tender;
- Il-Gvern ma qalx liema proċedura intużat sabiex il-Gasol gie rilaxxat mill-obbligi li kellu bħala sieheb fil-*consortium* Electrogas Malta;
- Dawn l-iżviluppi jqajjmu dubji kemm fuq l-integrità tal-proċess tal-ghazla kif ukoll fuq l-integrità tal-proġett innifsu;

U peress illi:

- Il-Gvern iddikjara li diġa rahhas il-kontijiet tad-dawl u l-ilma skont ma wiegħed fil-programm tiegħu u dan minghajr lanqas biss kienet għadha bdiet tinbena u wisq anqas topera il-*powerstation* ġdida li għandha tinbena mill-

Electrogas u dan meta l-*powerstation* kellha tinbena sabiex taghmel tajjeb finanzjarjament għall-imsemmi rohs;

- Dan huwa proġett li ser jorbot mhux biss il-mandat tal-amministrazzjoni preżenti iżda illi ser jorbot numru ta' Gvernijiet fil-futur;
- Il-Gvern, permezz tal-Enemalta, jidher li dahal fi ftehim imsejjah *security of supply agreement* fit-tul mal-Electrogas li permezz tiegħu jidher li intrabat b'kundizzjonijiet li jixtri l-elettriku minghand l-Electrogas għal tul ta' żmien, liema ftehim u liema kundizzjonijiet għadhom mhumieq magħrufa għax qatt ma ġew pubblikati kif jitlob il-prinċipju ta' trasparenza;
- L-imsemmi ftehim *security of supply agreement*, kif ukoll l-istess garanzija bankarja aktar 'il fuq imsemmija, jirriżulta li qegħdin jiġu investigati mill-Kummissjoni Ewropea sabiex jiġi stabbilit jekk dawn il-ftehim jiksru il-liġi tal-Unjoni Ewropea u senjatament ir-regoli dwar l-ghajnuna statali (*state aid*);
- Tqum il-mistoqsija dwar l-iskop, il-vijabilità u jekk il-proġett fl-intier tiegħu huwiex *value for money*;

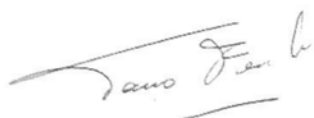
U peress illi:

Skont Artikolu 9 a (1) tal-Liġi tal-Awditur Ġenerali (Kap 396 tal-Liġijiet ta' Malta), l-Uffiċċju tal-Awditur Ġenerali għandu l-jedd li jinvestiga materja marbuta ma' propjetà tal-Gvern jekk tali materja titressaq għall-attenzjoni tal-Awditur Ġenerali minn tlett membri tal-Kumitat tal-Finanzi Pubbliċi;

Għalhekk ahna it-tlett membri tal-Kumitat tal-Finanzi Pubbliċi u l-Onor Marthese Portelli qegħdin nitolbu lill-Uffiċċju tal-Awditur Ġenerali sabiex jinvestiga is-segwenti:

- il-proċess tal-ghazla li wassal biex il-Gvern jagħzel il-*consortium* Electrogas Malta biex jibni il-*power station* u jissupplixxi l-elettriku lill-Enemalta, u sabiex jistabilixxi jekk sarx proċess ta' għazla diliġenti ibbażat fuq prinċipji ta' governanza tajba.
- jekk f'dan il-proċess ta' għazla intalbox dokumenti li juru s-saħħa finanzjarja ta' kull kumpanija li tiffirma parti mill-*consortium* u jekk id-dokumenti fir-rigward ta' Gasol kinux juru li hemm ir-riskji li rreferew għalihom l-Awdituri tal-istess kumpanija.
- x'piż ingħata lil din l-informazzjoni u cioe jekk il-Gvern kienx jaf u hassx li għandu jinjora, jew, jekk ma kienx jaf, għaliex l-informazzjoni ma ntalbitx.
- jekk il-Gvern u/jew l-Enemalta ma kellhomx prova uffiċjali u dokumentata li l-*consortium* kellu l-finanzjament neċessarju biex iwettaq il-proġett skont kif mitlub fid-dokumenti tal-EOI u fl-RFP.

- jekk il-Gvern ikkreax kundizzjonijiet favorevoli għall-*consortium* rebbieħ għas-skapitu ta' kumpaniji oħra li seta' kellhom interess f'dan il-proġett meta inghatat garanzija statali għal self bankarju u jekk din il-garanzija saritx bi ksur tal-provvedimenti finanzjarji tal-Gvern.
- il-proċess li ntuża biex il-kumpanija Gasol thalliet titlaq mill-*consortium* Electrogas Malta u dan sabiex jiġi stabbilit jekk il-proċedura li tintuża bħala regola f'każijiet bħal dawn gietx segwita u jekk l-interessi tal-poplu Malti ġewx salvagwardjati.
- il-ftehim li l-Gvern u/jew l-Enemalta, daħal fihom, permezz tal-Enemalta, sabiex jixtri l-elettriku mill-Electrogas u jekk dan il-ftehim jirrispettax il-prinċipji ta' governanza tajba, inkluż ta' trasparenza, vijabilità u *value for money*.
- il-prezz li bih il-Gvern u/jew l-Enemalta ftehem li jixtri l-elettriku mingħand l-Electrogas huwiex aktar favorevoli mill-prezz li bih, l-Enemalta qed tixtri l-elettriku mill-*interconnector* f'dawn l-ewwel xhur ta' thaddim tiegħu.



Tonio Fenech
Chairperson
Kumitat Parlamentari għall-Kontijiet Pubbliċi



Mario de Marco
Viċi Kap għall-Hidma fil-Parlament
Shadow Minister tal-Finanzi



Claudio Grech
Shadow Minister tal-Ekonomija



Marthese Portelli
Shadow Minister tal-Ambjent, l-Energija u t-Trasport

Appendix B - Additional Request by the Public Accounts Committee

KAMRA TAD-DEPUTATI



HOUSE OF REPRESENTATIVES

21 ta' Awwissu 2015

Sur Anthony Mifsud
Awditur Ġenerali
Uffiċċju tal-Awditur Ġenerali
Floriana

Sur Mifsud,

Nirreferu għall-ittra tagħna datata 30 ta' Lulju 2015 u li fiha tlabna li l-Uffiċċju tal-Awditur Ġenerali jinvestiga l-mod li bih il-Gvern mexxa waqt u wara l-ghoti ta' kuntratt biex tinbena Power Station ġdida. Fl-ittra tagħna konna għamilna referenza għall-fatt li l-Gvern ta garanzija statali ta' €88 miljun sabiex jgħin lill-konsorzju privat jikseb self mill-banek. Irrimarkajna li din il-garanzija statali hija bla preċedent u ma kenitx inkluża fil-kundizzjonijiet tas-sejha għall-offerti li kien għamel il-Gvern biex ihajjar kumpaniji japplikaw biex jibnu u jmexxu il-Power Station il-ġdida.

Ahna konna esprimejna thassib dwar kemm dan jikkostittwixxi governanza tajba u kemm dan l-izvillup jaqbel mal-ispirtu u l-provedimenti tal-liġijiet li jirregolaw ix-xiri pubbliku.

Ftit granet wara li ktibna l-ittra tagħna, proprju fit-12 ta' Awwissu, il-Gvern habbar li l-garanzija statali telgħet minn €88 miljun għal €360 miljun.

Fl-opinjoni tagħna, dan il-fatt ikompli jiggrava sitwazzjoni li kienet diġà gravi. Din il-garanzija ma kenitx previst fl-istadju tas-sejha għall-offerti. Ahna ninnutaw li filwaqt li l-ewwel garanzija statali ġiet deskritta bħala *bridge loan* temporanju, it-tieni garanzija ġiet estiża għal total ta' 29 xahar, dan meta il-bini tal-powerstation għandu jsir fi 18-il xahar.

Qegħdin ingibu dan għall-attenzjoni tiegħek sabiex inti żżid din il-garanzija mogħtija ta' €360 miljun fl-investigazzjoni li l-Uffiċċju tiegħek qiegħed jagħmel fuq dan il-proġett.

Tonio Fenech
Chairperson
Kumitat Parlamentari għall-Kontijiet Pubbliċi

Mario de Marco
Viċi Kap għall-Hidma fil-Parlament
Shadow Minister tal-Finanzi



Claudio Grech
Shadow Minister tal-Ekonomija

Marthese Portelli
Shadow Minister tal-Ambjent, l-Energija u t-Trasport

Appendix C - Information submitted by the Leader of the Opposition



Kap tal-Oppożizzjoni

Leader of the Opposition

25 t'April, 2016

Is-sur Charles Deguara
Awditur Ġenerali
Uffiċċju tal-Awditur Ġenerali
Floriana

Sur Deguara,

Nagħmel referenza għat-talba ta' l-Oppożizzjoni li saret fit-30 ta' Lulju 2015 mill-Onor. Mario de Marco, l-Onor. Tonio Fenech, l-Onor. Claudio Grech u l-Onor. Marthese Portelli sabiex tinvestiga l-mod li bih il-Gvern mexxa waqt u wara l-ghoti tal-kuntratt biex tinbena *power station* ġdida. Din it-talba kienet segwita b'ittra datata 21 ta' Awissu 2015 fid-dawl tal-fatt li kien sar magħruf li l-Gvern kien saħansitra daħal għal garanzija statali bla preċedent ta' €360 miljun biex isir dan il-proġett.

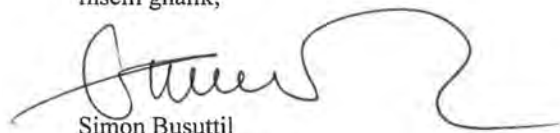
Nagħmel referenza ukoll għal dak li jiena stqarrejt aktar kmieni din il-ġimgħa fil-Parlament u cioe' li qabel l-aħħar Elezzjoni Ġenerali, il-Partit Nazzjonalista kien ġie avviciinat biex jikkunsidra proposta għall-bini ta' *power station* ohra. Huwa evidenti li l-istess proposta kienet saret lill-Partit Laburista u li konsegwentement, dwar il-bini tal-*power station* ġdida kien hemm qbil mal-Partit Laburista saħansitra minn qabel l-elezzjoni.

In vista ta' dan, qiegħed nibgħatlek kopja ta' dokument li kien ġie mghoddi lill-Partit Nazzjonalista qabel l-elezzjoni. Minn dan id-dokument jirriżulta ċar mhux biss li l-proposta kienet simili hafna għal dik preżentata mill-Partit Laburista fil-kampanja elettorali, iżda hija wkoll kwazi identika għall-proġett li fil-fatt intagħżel. Jirriżulta wkoll li l-proponent tal-proġett kif ukoll l-investituri GASOL u GEM huma l-istess li fil-fatt intagħżlu.

Aktar minn hekk, dan id-dokument johloq thassib serju hafna li l-ispeċifikazzjonijiet tat-talba mahruġa mill-Korporazzjoni Enemalta għall-bini tal-*power station* kienu influwenzati, jekk mhux iddettati, minn min kellu interess dirett fl-istess kuntratt.

Jien nemmen li dan huwa affront sfaċċat għall-governanza tajba fl-amministrazzjoni pubblika. Nitlobok għaldaqstant tieħu dan id-dokument in konsiderazzjoni għall-fini tal-investigazzjoni tiegħek u nibqa' disponibbli għal kull informazzjoni ulterjuri li tkun teħtieġ.

Inselli għalik,


Simon Busuttil
Kap tal-Oppożizzjoni



³⁴ The proposal as appended to the letter submitted to the NAO by the Leader of the Opposition is reproduced in its entirety. The NAO noted that page 9 of the proposal was missing.



Bringing Low Cost Electricity to Malta



Bringing LNG to Malta
Cutting CO2 Emissions



Greener Energy for Malta

Who Are We?



A consortium, consisting of:

[Gasol, plc](#), (symbol AIM: GAS) a London-based AIM-listed gas monetisation company. Gasol specialises in Liquefied Natural Gas (LNG), and is developing its own African-based upstream and midstream liquefaction projects. Gasol is also developing downstream gas-to-power projects with a broader geographic range.

[International Power plc](#) (FTSE 100 – symbol IPR), a growing independent power generation company with interest in some 33GW (45 power stations) worldwide. IPR own coal, gas, pumped storage hydro, run of river hydro and 1199MW of wind. 1997 PFO £904m & PBT 596m. Current market capitalisation - £5.2bn.

[A Maltese Investors group](#), assembled and led by Paul Apap Bologna. We do not want to come to Malta as an entirely foreign group. The investor group will comprise a diverse group of Maltese citizens and prominent business families



Teekay Corporation, (symbol NYSE: TK) a Vancouver-based shipping and maritime group, with a large and rapidly growing gas division and LNG fleet. Teekay is the largest shipping company in the world by market capitalization. Teekay has substantial depth in all aspects of marine technology. Teekay will not be an equity investor in the project company itself, but will invest in and provide the marine assets.

Maltese Power Situation – Our Understanding



- Marsa (267 MW) – 19 to 45 years old – scheduled for shutdown
 - No physical space for expansion
 - Too old and obsolete to upgrade
 - Capacity needs to be replaced
 - Runs on fuel oil
- Delimara (304 MW) – 8 to 14 years old
 - Some available land in the vicinity
 - 110 MW of Combined Cycle Gas Turbines @ 38% efficiency
 - Cannot satisfy demand if Marsa is closed
- Total system capacity of 577 MW, expected to increase to 600 MW by 2010
- Difficulties of compliance with EU emissions targets
- Government investment required

Greener Energy for Malta

The Proposal

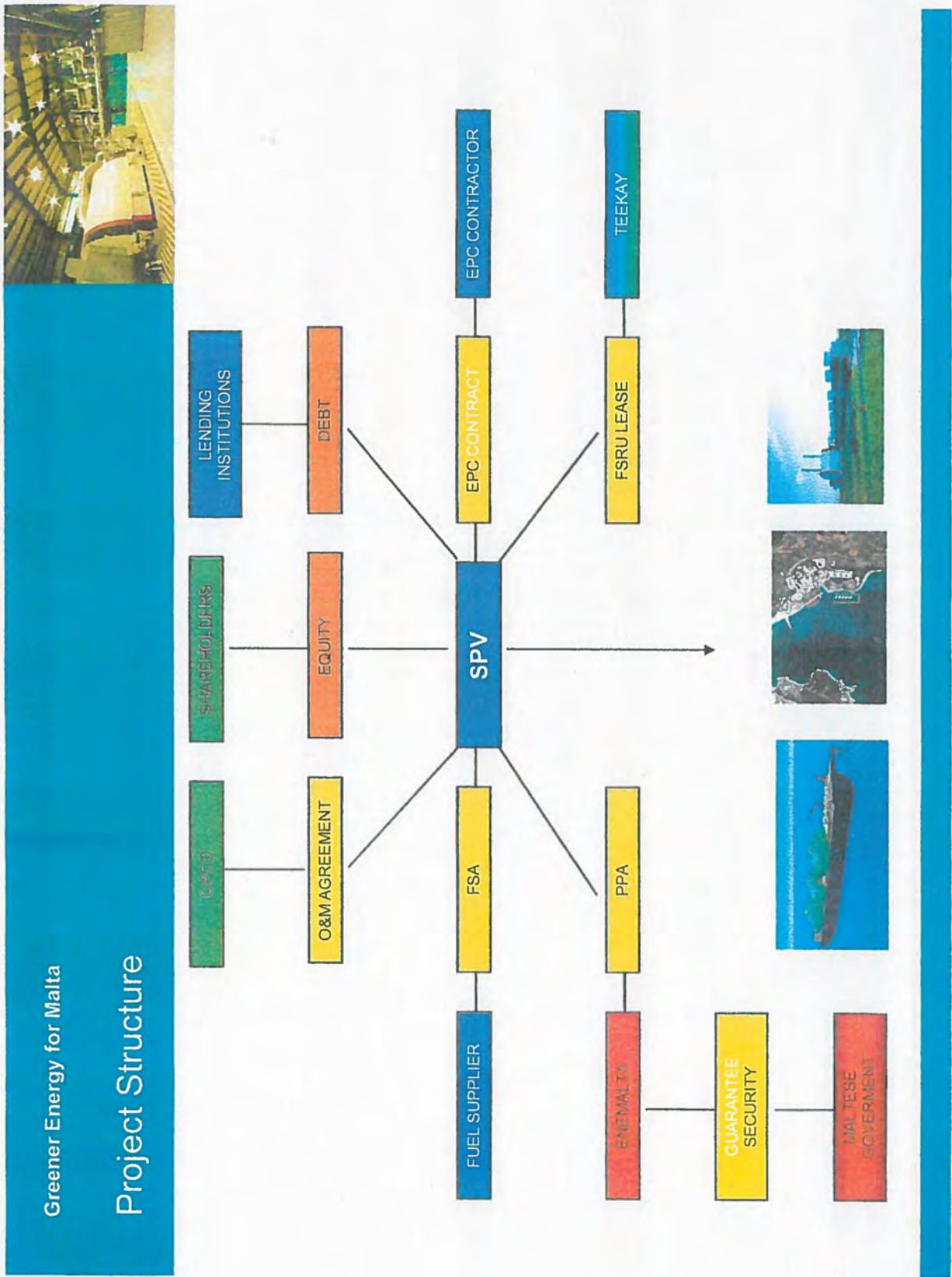


- We build a new 400 MW (or more) high efficiency plant fuelled by imported LNG
- We provide LNG fuel supply, storage and regasification
- We will undertake all funding, implementation and operational commitments to deliver the project
- We would be willing to manage the Delimara plant under contract and in portfolio if the Government desires
- Under all circumstances, Enemalta remains grid operator and sole seller and distributor of electricity in Malta

What We Need



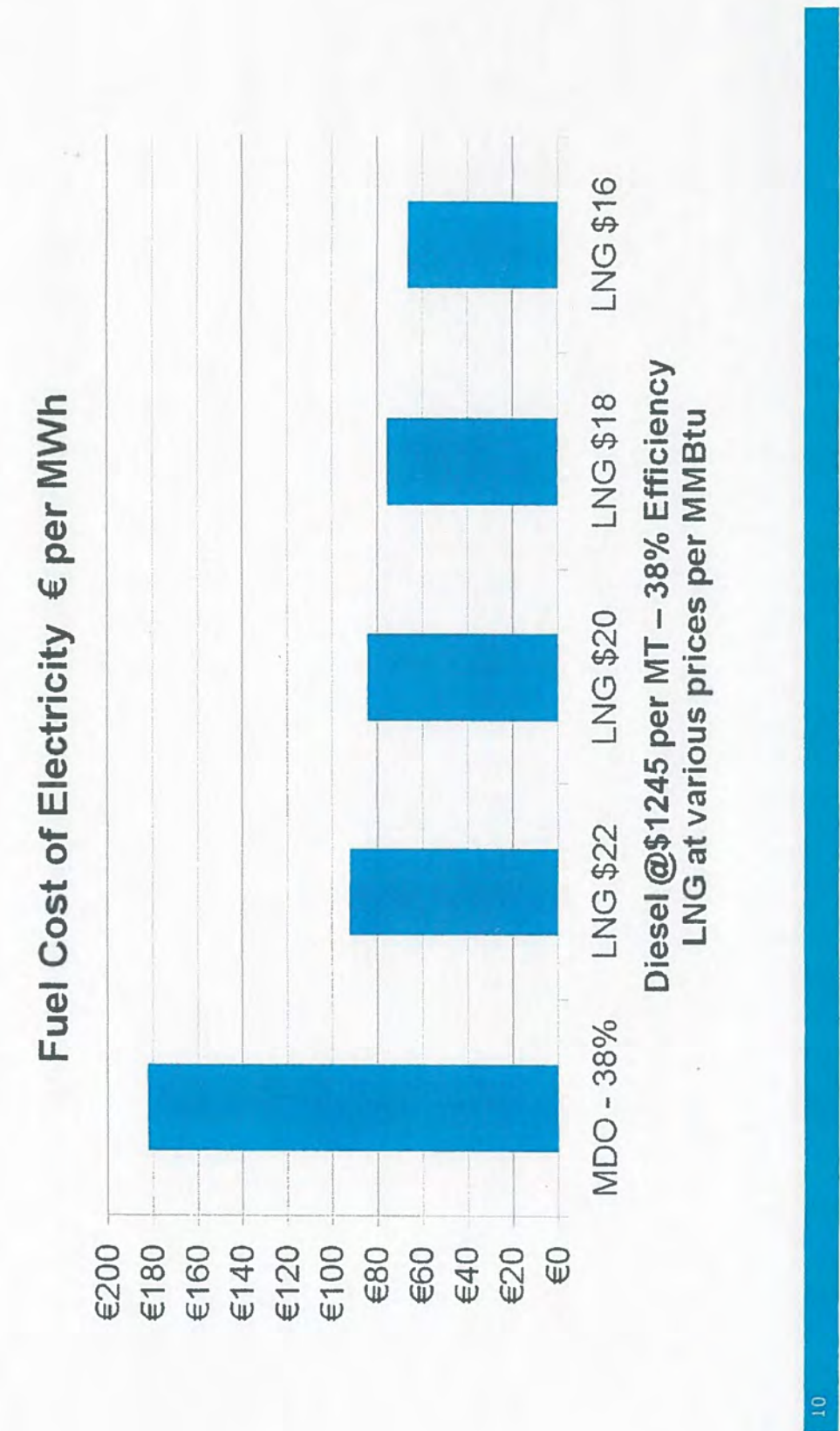
- Enemalta to enter into Power Purchase Agreement (PPA)
 - 20+ year term
 - Government to guarantee Enemalta's contractual performance
 - Fuel and O&M (Operations and Maintenance) is a pass-through
 - Payment based on capacity made available
- PPAs are not a new concept. Examples can be seen in:
 - Portugal
 - Poland
 - Middle east
 - Puerto Rico



Benefits to Malta



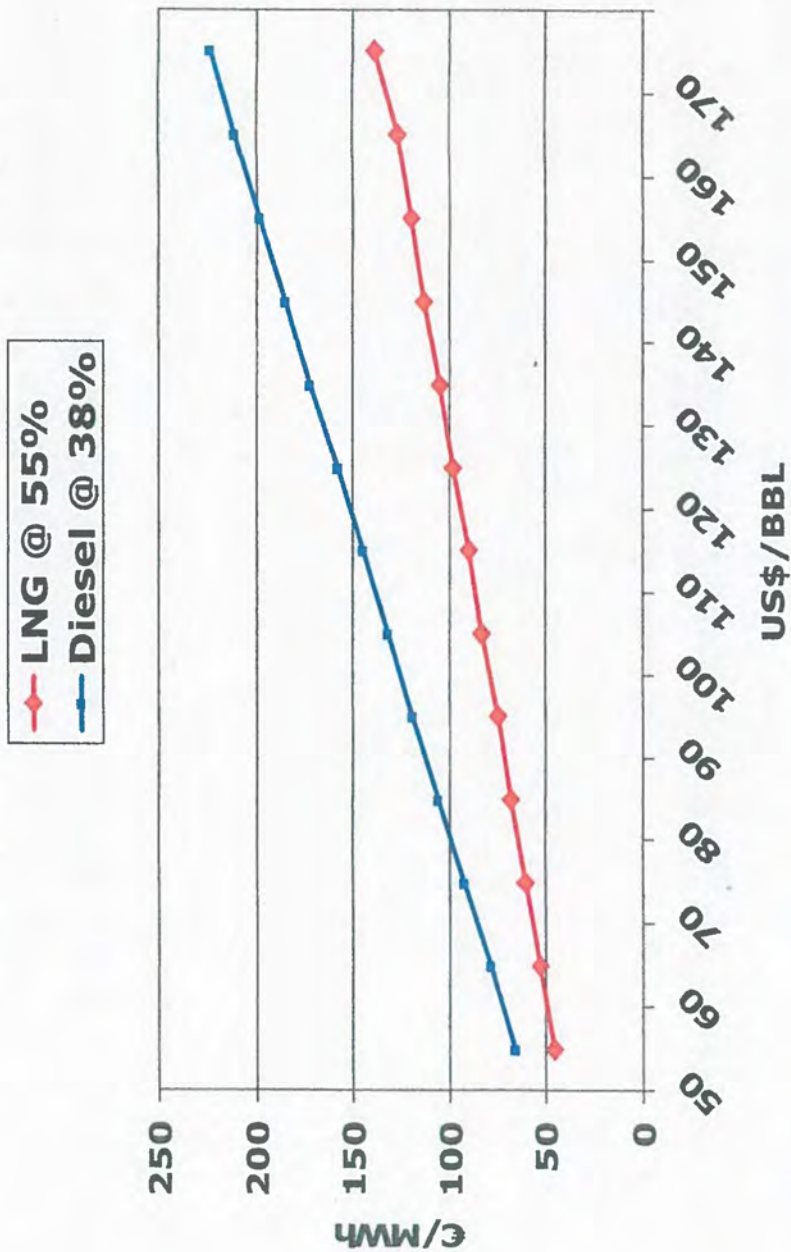
- 30-40% saving on the wholesale power price
 - Electricity from gas achieves up to 55% gross efficiency
- Higher efficiencies mitigate the price fluctuations of global energy cost
 - Electricity from Oil is Inefficient (around 20%)
 - i.e., 80% of energy generated from oil is lost as waste heat
- We will cut CO₂ emissions:
 - Enemalta alone generates 2.1 MM tonnes of CO₂
 - Switching to gas results in approx 1.2 MM tonnes CO₂
- Gas significantly reduces other pollutants (e.g. Sulphur & NOx)
 - Full compliance with LCPD
- All upfront Capital Investment by the Consortium
 - Government/Enemalta will not have to invest further capital in generation and LCPD investment cost





Higher Efficiencies Lower the Impact of Fuel Cost...

Fuel Cost of Electricity in €/MWh



Greener Energy for Malta

New Power Plant



- Capacity 400MW or greater
 - Exact size depends on study and consultation with Government
 - Total capacity to meet Malta's needs now and in future
- Propose construction adjacent to Delimara
 - Land use already allocated to power plant usage
 - Adjacent land appears to be government owned
 - Greater efficiencies achieved by co-location
- The harbour at Delimara can easily accommodate LNG vessels
- An expensive undersea cable link to Sicily can be enhanced
 - May be desirable if used to export power
 - Consortium happy to supply extra power for export
 - Feasibility study terms of reference could be modified to include export
 - Sizing of cable could be adjusted in light of export possibilities
 - Thus, would provide a return on investment

Project Components - LNG FSRU

- LNG purchased on market by the Consortium under long-term contract & transported to Malta – a 400 MW plant requires some 6-8 cargos per year
- LNG is regasified in a specially designed **FSRU** (Floating Storage and Regasification Unit).
- The FSRU is located opposite Freeport Harbour



Greener Energy for Malta

Project Components – Ideal site & layout



We suggest locating the mooring site shown below, adjacent to Delimara. It appears that the water depth is sufficient to get the vessel in without dredging.



Proposed FSRU Location

Project Components – Regasification



Number of technologies available

- Mustang air vaporisation possible choice
- Reduces NOx and CO2 emissions
- Uses no sea water
- Produces water as by-product
- Standard, proven components
- Suitable for onshore or offshore installations

Greener Energy for Malta

Project Components – CCGT





Project Components – CCGT



Greener Energy for Malta

Business Structure



Basic Project Structure

- Consortium will provide all equity investment, arrange all debt
- In order to secure project financing, we would require;
 - Long-term Power Purchase Agreement (PPA) Guaranteed/Secured by the Government , with fuel component linked to world energy prices
 - All necessary licenses & construction permits
 - Operating contract to International Power (including if required Delimara)

Wholesale Power Pricing

- We can undertake that high efficiency gas fired power will always be cheaper than the low efficiency oil burning alternative
- We expect higher efficiency will lead to 30-40% price reduction
 - The project helps mitigates fluctuations in global oil prices
 - Consortium will not have pricing power

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Next Steps



Tell us how to take this forward. We need:

- A clear understanding of the path towards project approval
- A clear understanding of Maltese Government issues, constraints and process
- Appointment of a joint project delivery team between the Consortium, Enemalta and the Government
- Any assistance to provide a competitive project, such as preferential depreciation

Greener Energy for Malta

Project Timetable



- Approval in principle of the conceptual proposal
- Six months to validate assumptions & finalise project details
 - Submission of a detailed proposal to the Government, including timelines, heads of terms and other documentation
 - Project approval by Government including licenses and clearances
- Six months more to Final Investment Decision (Financial Close)
- Project implementation and delivery (approximately 3 years from FID and consents in place)
 - Appointment of a senior government liaison official
 - Co-operation and fast track delivery of permits & key project documentation
 - Facilitation of work permits for non-EU nationals required to deliver the project

Summary



- Proposed project allows Malta to meet 2016 LCPD obligation
 - Dramatically reduces CO2
- Will reduce the price of electricity
 - Provides alternative fuel source (LNG)
- Fully funded by consortium
- Consortium brings to bear:
 - LNG Experience
 - International operating experience
 - Financial strength
- Decision is yours – we will do our part if you will do yours



- Term >20 Years
- Availability based
- Capacity and energy based pricing
- Price indexation
- Variable energy costs (fuel) a pass through
- Heat rate
- Performance and plant characteristics
- Performance guarantees (penalties and bonuses)
- Performance of operator – Good Operating Practice
- Environmental Stds

Appendix D - Request for Proposals: Stage 4 Evaluation Criteria

Lifetime Average Price of Energy (LAP_e)

$$LAP_e = \frac{\sum_{i=0}^{N-1} \frac{C_i}{(1+r)^i}}{\sum_{i=0}^{N-1} \frac{E_i}{(1+r)^i}}$$

Where:

- C_i represents the availability and energy payments in year i in euro;
- E_i represents the electricity delivered in year i in MWh;
- r represents the Enemalta real discount rate; and
- N represents the number of years in the PPA term.

Lifetime Average Price of Gas (LAP_g)

$$LAP_g = \frac{\sum_{i=0}^{n-1} \frac{C_i}{(1+r)^i}}{\sum_{i=0}^{n-1} \frac{G_i}{(1+r)^i}}$$

Where:

- C_i represents the availability and energy payments in year i in euro;
- G_i represents the natural gas delivered in year i in mmBTU;
- r represents the Enemalta real discount rate; and
- n represents the number of years in the GSA term.

Remaining Useful Life payment of the Special Purpose Company’s Electricity Facility (RULCCGT)

$$RUL_{CCGT} = \frac{\sum_{i=N}^E \frac{C_i}{(1+r)^i}}{(1+r)^N}$$

Where:

- C_i represents the availability payments in year i in euro;
- r represents the Enemalta real discount rate;
- N represents the number of years in the PPA term; and
- E represents the lifetime of the SPC’s electricity facility.

Remaining Useful Life payment of the Special Purpose Company's Gas Facility (RULLNG)

$$RUL_{LNG} = \frac{\sum_{i=N}^E \frac{C_i^{CCGT}}{(1+r)^i}}{(1+r)^N} + \frac{\sum_{i=n}^E \frac{C_i^{Gas}}{(1+r)^i}}{(1+r)^n}$$

Where:

- C_i^{CCGT} represents the SPC's electricity facilities portion of the LNG capacity payments in year i in euro;
- C_i^{GAS} represents the SPC's gas facilities portion of the LNG capacity payments in year i in euro;
- r represents the Enemalta real discount rate;
- N represents the number of years in the PPA term;
- n represents the number of years in the GSA term; and
- E represents the lifetime of the SPC's gas facilities.

Ranking of Stage 4 Price

$$y_i = y^* \left(1 - \frac{p_i - p^*}{p^*}\right)$$

Where:

- y_i represents the points gained by bidder i in Stage 4;
- y^* represents the points gained by the cheaper final price bidder in Stage 4 (100 points);
- p^* represents the cheapest final price; and
- p_i represents the final price of bidder i.

In cases where the bidder's final price was greater than or equal to twice the cheapest final price, the points allocated as y_i would be zero.

Appendix E - List of Consultants and Other Services engaged in respect of the Project through Direct Contracts

Figure 72: List of consultants and other services engaged in respect of the project through direct contracts

Consultant/Service provider	Date of engagement	Service provided	Value of direct contract (€)
Acousti-Cal Consultancy	various 05/12/2013 – 13/05/2014	Compilation of EIA document	€22,409
APS Consultants	06/03/2014	Compilation of EIA document – agriculture report	€3,500
ASC Co-operative Ltd	26/11/2013	Compilation of EIA document – cultural heritage	€4,000
Beat Consulting	various 13/06/2013 – 20/05/2014	Programme management	€142,525
Camilleri Preziosi Advocates	06/03/2014 – 01/04/2014	Consultancy services in connection with regulatory, commercial and contract laws issues	€247,485
Camilleri Preziosi Advocates	16/12/2014 – 30/11/2017	Consultancy services in connection with regulatory, commercial and contract laws issues	€569,426
Channoil Consulting Ltd ¹	various 10/09/2013 – 28/10/2013	Consultancy regarding RfP	€117,949
DNV KEMA	various 17/05/2013 – 01/04/2014	Consultancy on energy supply tendering procedure	€586,371
DNV KEMA	n/a	Consultancy on renewable energy directive	€28,000
Dr Edwin Mintoff Architects & Civil Engineers	various 26/11/2013 – 15/11/2016	Consultancy service with respect to planning and permitting	€153,493
Dr Elisabeth Conrad	12/12/2013 – 31/01/2014	Compilation of EIA document – landscape and visual impact assessment	€4,980
Dr Louis F Cassar	25/11/2013	Compilation of EIA document – land cover assessment	€4,520
Dr Pierre Attard	25/06/2013	Professional fees for evaluation of the EoIC	€406
E-Cubed Consultants Ltd	04/02/2014	Economic study for the IPPC permit for the operation of Delimara Power Station on gas fuel	€12,319
Ecoserv Ltd	various 02/10/2013 – 16/04/2014	Compilation of EIA document – marine and air pollution studies	€225,277
Gas Strategies Group Ltd ²	27/11/2013	Strategic advice and assessment regarding LNG supplies	€167,446

iAS Partnership	various 12/12/2013 – 26/02/2014	Architectural services on the PPA/GSA	€354,997
Ing. Joseph Micallef	various 04/07/2013 – 07/04/2014	Quality assurance advisory services	€24,934
John Paul Cauchi & Julian Mamo	24/06/2013	Compilation of EIA document – health impact assessment	€6,700
Mediterranean Maritime Research & Training Centre Co-op Soc. Ltd MARIN	22/05/2014	Nautical evaluation of the proposed LNG facility at Delimara	€247,500
Nexia BT Advisory Services Ltd	14/04/2014 – 29/07/2015	Compilation of EIA document – cost benefit analysis and other assignments	€123,604
Paul Gauci	14/06/2013	Compilation of EIA document – EIA, Seveso and IPPC lead coordinator	€25,000
PIRA Energy Group ³	10/09/2013 – 23/10/2013	Provision and support on long-term LNG pricing	€54,450
Randolph Camilleri Surveys Ltd	10/09/2013	Compilation of EIA document – surveying services	€45,017
RSM Malta Consulting Ltd	various 10/09/2013 – 12/02/2014	Ad hoc consultancy regarding Delimara Gas and Power Project	€30,204
Sciriha, Attard Montalto, Galea & Associates	various 18/10/2013 – 23/10/2013	Legal Advice - setting up of an SPC	€11,295
SGS Italia SpA	09/05/2014	Risk assessment for the relocation of the dolphin in Marsaxlokk Bay	€12,240
SGS Italia SpA	n/a	Onshore terminal vs offshore terminal	€13,800
SGS Italia SpA (Malta Branch)	06/03/2014 – 12/03/2014	Consultancy service for the EoIC review process	€137,236
Svasek Hydraulics – Ingenieursbureau Svasek b.v	n/a	Delivery of the 20 year hourly time series at the berth of the LNG terminal	€42,000
Terracore	various 10/09/2013 – 11/02/2014	Compilation of EIA document – Geology and hydrology study	€77,200
Virtual Reality Studios	06/12/2013 – 06/03/2014	Envisaged 3D visuals	€11,920

Notes:

1. The payment to Channoil Consulting Ltd amounted to £100,658 and was converted to euro utilising ECB conversion rates applicable on the last date of engagement.
2. The payment to Gas Strategies amounted to £142,580 and was converted to euro utilising ECB conversion rates applicable on the date of payment.
3. The payment to PIRA Energy Group amounted to \$72,500 and was converted to euro utilising ECB conversion rates applicable on the date of payment.

Appendix F - Energy Tariff

Energy Availability Payment

$$C_{Y,M} = B_Y \cdot \sum_H D_H W_H S_H$$

Where:

- B_Y means the base capacity charge (expressed in €/MWh);
- $\sum_H$ means the sum over the hours in billing period M;
- D_H means the demonstrated MW available for hour H;
- W_H means the Hourly Availability Weight; and
- S_H means the adjustment factor applicable to reflect a contract stock shortfall.³⁴

During the Base Price Period

$$B_Y = \{P_1 + Q_0\}$$

Where:

- P_1 means the fixed base capacity charge for power, being €14.70/MWh;
- Q_0 means the base capacity charge for gas, being €13.50/MWh, or zero after the GSA exit date.

Outside the Base Price Period

$$B_Y = \{P_2 + Q_0\} \cdot I_Y$$

Where:

- P_2 means the base capacity charge for power, being €21.42/MWh;
- I_Y is the factor applied according to the formula:

$$I_Y = \left(\frac{X_Y}{X_0} \right)$$

Where:

- X_Y means the value of HICP for the calendar month immediately preceding the commencement of PPA contract year Y; and
- X_0 means HICP for the calendar month when the schedule start date occurs.

³⁴ A clause in the Conversion Term Agreement amended the PPA to state that this adjustment factor was not applicable during the Conversion Term.

Energy Delivery Payment

$$E_{Y,M} = \{G_{Y,M} \cdot R_H + VP_Y\} \cdot \sum_H \{N_H - IMP_H\}$$

Where:

- $G_{Y,M}$ means (i) on or prior to the GSA Exit Date the effective gas price pursuant to the GSA in €/mmBTU, and (ii) after the GSA Exit Date, means the Effective Commodity Price $GASP_M$ expressed in €/mmBTU in billing period M, calculated in accordance with the formula:

$$GASP_M = \frac{GSV_M + DV_M}{GSQ_M + DQ_M}$$

Where:

- GSV_M is the derived stock opening value in euro on the first day of calendar month M;
- DV_M is the delivered value of LNG in calendar month M in euro.
- GSQ_M is the derived opening LNG stock quantity on the first day of calendar month M; and
- DQ_M is the delivered quantity of LNG in calendar month M.
- VP_Y means the total variable operating costs for Power and Gas in €/MWh,
 - where during the Base Price Period: $VP_Y = V_O^P$
 - And outside of the Base Price Period: $VP_Y = V_O^P \cdot I_Y$
 - Where: V_O^P means the base Variable Operating Cost for Power and Gas, being €4.10/MWh;
- N_H means the Net Electrical Output in MWh for the Hour H;
- IMP_H means the Imported Electricity in MWh for the Hour H; and
- R_H means the Guaranteed Delimara 4 Heat Rate for Hour H adjusted for actual ambient conditions. The Conversion Term Agreement added a provision to this definition: in any Hour during which imported electricity in MWh exceeded the net electrical output in MWh, the guaranteed Delimara 4 heat rate per hour adjusted for actual ambient conditions was to be regarded as the average of the guaranteed Delimara 4 heat rate for each hour in the billing period. If the summation of all net electrical output in MWh for all hours in the billing period was zero, then the last prior billing period in which the summation of the net electrical output in MWh for all hours in the billing period was higher than one was to be considered.

Gas Price

The effective gas price in €/mmBTU is calculated according to the formula:

$$EFF_{y,M} = GASP_{y,M} + VG_y$$

Where:

- VG_y means the total variable operating costs for gas in €/mmBTU, where during the base price period:

$$VG_y = VOC_0$$

and, outside of the base price period:

$$VG_y = VOC_0 \cdot I_y$$

Where VOC_0 means the base variable operating cost being €0.07/mmBTU.

Additional Charges – Starts

The payment for Starts $A_{s,y,M}$ shall be calculated as follows for Delimara 4:

$$A_{s,y,M} = \{s_1 + c\} \sum_H T_1 + \{s_2 + c\} \sum_H T_2 + \{s_3 + c\} \sum_H T_3$$

Where:

- s_1 means the Base Cold Start Charge, being 2,450 mmBTU multiplied by the Gas Price per dispatched Successful Start of a Cold Start;
- s_2 means the Base Warm Start Charge, being 1,830 mmBTU multiplied by the Gas Price per dispatched Successful Start of a Warm Start;
- s_3 means the Base Hot Start Charge, being 730 mmBTU multiplied by the Gas Price per dispatched Successful Start of a Hot Start;
- c means the Base Start Cost Charge, being €9,495 per dispatched Successful Start;
- $\sum_H T_1$ means the number of dispatched Successful Starts of a Cold Start during Calendar Month M;
- $\sum_H T_2$ means the number of dispatched Successful Starts of a Warm Start during Calendar Month M; and
- $\sum_H T_3$ means the number of dispatched Successful Starts of a Hot Start during Calendar Month M.

Additional Charges – Mode Starts

The Conversion Term Agreement included information with regard the payment of mode starts $A_{MS,Y,M}$. This payment was to be calculated as follows:

$$A_{MS,Y,M} = \sum_H M \cdot s_4$$

Where:

- $\sum_H M$ means the number of dispatched mode starts during Calendar Month M; and
- s_4 means the mode start charge, being:
 - zero with respect to any mode start prior to 1 December 2017;
 - from 1 December 2017 until 31 December 2017 (i) zero for the first six mode starts, and (ii) €10,000 with respect to each mode start from the seventh mode start from 1 December 2017; and
 - from 1 January 2018 until the termination date (i) zero for the first twenty-four mode starts in a PPA contract year, and (ii) €10,000 with respect to each mode start from the 25th mode start in a PPA contract year from 1 January 2018, provided that if the final PPA contract year was not a 12-month period, the preceding allowance of 24 mode starts would be pro-rated for such part 12-month period.ⁱⁱ

It was noted in the Conversion Term Agreement that both starts and mode starts were to be payable in line with payment terms stipulated in the IA, including the setting off of amounts due by Enemalta for start charges for mode starts from amounts due and payable to Enemalta for Enemalta heat rate credit, delay liquidated damages interest and trip credit.ⁱⁱⁱ

Additional Charges – Reactive Power

The payment for Reactive Power supplied beyond the MFS limits $A_{R,Y,M}$ shall be calculated as follows:

$$A_{R,Y,M} = q \cdot G_{Y,M} \cdot \sum_H L_H$$

Where:

- L_H means the generation of reactive power outside the MFS limits in MVARh for Hour H;
- q means the Base Reactive Power Charge, being 0.144 mmBTU/MVARh.

Appendix G - Gas Tariff

Gas Availability Payment

$$GAP_{Y,M}=P_Y\cdot\sum_H D_H S_H$$

Where:

- P_Y means the base gas availability charge (expressed in €/mmBTU);
- $\sum_H$ means the sum over the hours in billing period M;
- D_H means the demonstrated gas availability for hour H;
- S_H means the adjustment factor applicable to reflect a contract stock shortfall.

During the Base Price Period

$$P_Y = B_0$$

Where:

- B_0 means the base gas availability charge, being €0.784/mmBTU.

After the Base Price Period

$$P_Y = B_0 \cdot I_Y$$

Where:

- I_Y is the factor applied according to the formula:

$$I_Y = \left(\frac{X_Y}{X_0}\right)$$

Where:

- X_Y means the value of HICP for the calendar month immediately preceding the commencement of each GSA contract year Y; and
- X_0 means HICP for the calendar month when the schedule start date occurs.

Gas Delivery Payment

$$GDP_{Y,M} = GAS_{Y,M} + OOC_{Y,M}$$

Where:

- $GAS_{Y,M}$ means the allowance in respect of gas cost recovery in billing period M (expressed in €), calculated in accordance with the formula:

$$GAS_{Y,M} = GASP_{Y,M} \sum_H GD_H$$

Where:

- GDH means the gas delivered in hour H in mmBTU at the Delimara 3 connection point;
- $GASP_{Y,M}$ means the effective commodity price expressed in €/mmBTU in billing period M, allowance in respect of gas cost recovery in billing period M (expressed in €), calculated in accordance with the formula:

$$GASP_M = \frac{GSV_M + DV_M}{GSQ_M + DQ_M}$$

Where:

- GSV_M is the derived stock opening value in euro on the first day of calendar month M;
 - DV_M is the delivered value of LNG in calendar month M in euro.
 - GSQ_M is the derived opening LNG stock quantity on the first day of calendar month M; and
 - DQ_M is the delivered quantity of LNG in calendar month M.
- $OOC_{Y,M}$ means the allowance in respect of the recovery of certain non-oil indexed or gas-hub related costs in billing period M (expressed in €) calculated in accordance with the formula:

$$OOC_{Y,M} = VG_Y \cdot \sum_H GD_H$$

Where:

- VG_Y means the total variable operating costs for gas in €/mmBTU, where during the base price period:

$$VG_Y = VOC_0$$

and, outside of the base price period:

$$VG_Y = VOC_0 \cdot I_Y$$

Where VOC_0 means the base variable operating cost being €0.07/mmBTU.

Gas Price

The effective gas price in €/mmBTU is calculated according to the formula:

$$EFF_{Y,M} = GASP_{Y,M} + VG_Y$$

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(continued)

(continued)

1. *Journal of the American Medical Association*, 2000; 283: 2689-2693.

1. *Journal of Management Studies*, 1996, 33(1), 1-14.

Appendix I - Enemalta Take or Pay Deductions II

Prior to the Open Cycle Energy Delivery Date, in the event that ElectroGas Ltd does not achieve the Open Cycle Acceptance Date of any of the Gas Turbine Generators by the date that is two months after the Early Gas Commencement Date, an amount of Net Electrical Output, determined as:

$$AE = F \times ECQ \times \frac{GTG}{3} \times \frac{H1}{H2}$$

Where:

- AE means the amount of Net Electrical Output;
- F means 0.58;
- ECQ means the Enemalta Contract Quantity for the relevant Supply Reference Period;
- H1 means the number of hours during such Supply Reference Period prior to the Open Cycle Acceptance Date of such Gas Turbine Generator;
- H2 means the number of hours in the relevant Supply Reference Period; and
- GTG means the number of Gas Turbines that have not achieved their Open Cycle Acceptance Date by the Open Cycle Energy Delivery Date.

In the event that Delimara 4 is not available (determined in accordance with the PPA) after the Open Cycle Energy Delivery Date, an amount of Net Electrical Output determined as:

$$AE = F \times ECQ \times \frac{AGEA - ADMW}{AGEA} \times \frac{H1}{H2}$$

Where:

- AE means the amount of Net Electrical Output;
- F means 0.58;
- ECQ means the Enemalta Contract Quantity for the relevant Supply Reference Period;
- H1 means the number of hours during which Delimara 4 is not available (determined in accordance with the PPA) after the Open Cycle Energy Delivery Date in the relevant Supply Reference Period;
- H2 means the number of hours in the relevant Supply Reference Period;
- AGEA means the average Guaranteed Energy Availability during such period in which Delimara 4 is not available (determined in accordance with the PPA); and
- ADMW means the average Demonstrated MW Available during such period in which Delimara 4 is not available (determined in accordance with the PPA).

Appendix J - Enemalta Take or Pay Deficiency Payment

The Enemalta Take or Pay Deficiency Payment to be made during any Supply Reference Period shall be calculated as:

$$EToPP_s = GASP_s \times EToPS_s$$

Where:

- EToPP_s means the Enemalta Take or Pay Deficiency Payment during a Supply Reference Period;
- GASP_s means the applicable average Effective Commodity Price for the relevant Supply Reference Period calculated as per below; and
- EToPS_s means the Enemalta Take or Pay Deficiency as calculated by ElectroGas Ltd.

GASP_s shall be calculated as:

$$GASP_s = \frac{TBV_s}{TBQ_s}$$

Where:

TBV_s means the value of gas billed by ElectroGas Ltd to Enemalta during the relevant Supply Reference Period; and

TBQ_s means the total quantities of gas for which ElectroGas Ltd has billed Enemalta during the relevant Supply Reference Period.

TBVS shall be calculated as:

$$TBV_s = TBVP_s + TBVG_s$$

Where:

- TBVP_s means the total value of gas billed by ElectroGas Ltd to Enemalta during the relevant Supply Reference Period for Net Electrical Output delivered to the Network Connection Point in accordance with the IA and the PPA; and
- TBVG_s means the total value of gas billed by ElectroGas Ltd to Enemalta during the relevant Supply Reference Period for gas delivered at the Delimara 3 Connection Point in accordance with the IA and the GSA.

TBVP_s shall be calculated as:

$$TBVP_s = \sum_s GASP_M \cdot \sum_M [(N_H - IMP_H) \cdot R_H]$$

Where:

- $GASP_M$ means the Effective Commodity Price in €/mmBTU in calendar month M or part calendar month M;
- R_H means the Guaranteed Delimara 4 Heat Rate for hour H adjusted for Actual Ambient Conditions;
- $\sum_S$ means the summation of all the corresponding results in each month for the relevant Supply Reference Period;
- $\sum_M$ means the summation of all the corresponding results in each hour for the relevant calendar month M or part calendar month M;
- N_H means the Net Electrical Output in MWh for the hour H;
- IMP_H means the Imported Electricity in MWh for the hour H.

The total billed value for gas by ElectroGas Ltd to Enemalta under the GSA for the relevant Supply Reference Period shall be calculated as:

$$TBVG_S = \sum_S GAS_{Y,M}$$

Where:

$GAS_{Y,M}$ means the Gas Availability Payment in billing period M in the GSA contract year Y (expressed in €).

The total billed quantity for the relevant Supply Reference Period shall be calculated on the basis of:

$$TBQ_S = \sum_S (\sum_H \{N_H - IMP_H\} R_H) + \sum_S (\sum_H GD_H)$$

Where:

- N_H means the Net Electrical Output in MWh for the hour H;
- IMP_H means the Imported Electricity in MWh for the hour H.
- R_H means the Guaranteed Delimara 4 Heat Rate for hour H adjusted for Actual Ambient Conditions;
- $\sum_S$ means the summation of all the corresponding results in each month for the relevant Supply Reference Period;
- $\sum_H$ means the sum over the hours in billing period M; and
- GD_H means the gas delivered in hour H in mmBTU at the Delimara 3 Connection Point.

Figure 1

1. *Journal of Management Studies*, 1996, 33(1), 1-15.

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- Figure 1

Appendix L - Scheduled Take Obligation Deduction II

Prior to the Open Cycle Energy Delivery Date, in the event that ElectroGas Ltd does not achieve the Open Cycle Acceptance Date of any of the Gas Turbine Generators by the LNG Supply Term Commencement Date in respect of whole or part Scheduled Take Periods prior to the relevant Open Cycle Acceptance Date, an amount of Net Electrical Output, determined as:

$$AE = F \times ECQ \times \frac{GTG}{3} \times \frac{H1}{H2}$$

Where:

- AE means the amount of Net Electrical Output;
- F means 0.58;
- ECQ means the Enemalta Contract Quantity for the relevant Supply Reference Period, prorated for the relevant Scheduled Take Period;
- H1 means the number of hours during such Scheduled Take Period prior to the Open Cycle Acceptance Date of such Gas Turbine Generator;
- H2 means the number of hours in the relevant Supply Reference Period; and
- GTG means the number of Gas Turbines that have not achieved their Open Cycle Acceptance Date.

In the event that Delimara 4 is not available (determined in accordance with the PPA) during the relevant Scheduled Take Period in whole or in part after the Open Cycle Energy Delivery Date, an amount of Net Electrical Output determined as:

$$AE = F \times ECQ \times \frac{AGEA - ADMW}{AGEA} \times \frac{H1}{H2}$$

Where:

- AE means the amount of Net Electrical Output;
- F means 0.58;
- ECQ means the Enemalta Contract Quantity for the relevant Supply Reference Period, prorated for the relevant Scheduled Take Period in whole or in part after the Open Cycle Energy Delivery Date;
- H1 means the number of hours during which Delimara 4 is not available (determined in accordance with the PPA) after the Open Cycle Energy Delivery Date in the relevant Supply Reference Period, prorated for the relevant Scheduled Take Period;
- H2 means the number of hours in the relevant Supply Reference Period;
- AGEA means the average Guaranteed Energy Availability during such period in which Delimara 4 is not available (determined in accordance with the PPA); and
- ADMW means the average Demonstrated MW Available during such period in which Delimara 4 is not available (determined in accordance with the PPA).

Appendix M - Methane Number Credit

$$MCC = \text{€}0.25 \times \frac{80 - MN}{MN} \times \text{DMG}$$

- Where:
- MCC means the Methane Number Credit;
 - MN means the actual methane number;
 - DMG means the volume of gas deemed delivered to the Delimara 3 Connection Point.

Appendices

Appendix N - The Delivered Value

The Delivered Value (DV_M) means the value of the Delivered Quantity during each calendar month M, determined as:

The Delivered Value prior to the Fixed Price Period

From the date that is 15 months after the Scheduled Start Date to the date that is 23 months after the Scheduled Start Date:

$$DV_M = DQ_M * \alpha * BR_{Y,M-1} * EXR$$

Where:

- DQ_M means the delivered quantity as determined in accordance with the IA;
- α means the commodity multiplier being 0.1385 bbl/mmBTU;
- $BR_{Y,M-1}$ means Brent; and
- EXR means the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

The Delivered Value in respect of the Fixed Price Period

From the date that is 23 months after the Scheduled Start Date to the date that is 83 months after the Scheduled Start Date:

$$DV_{M-1} = DQ_M * (FPW * FP) + ((UPW * \alpha * BR_{Y,M-1}) * EXR)$$

Where:

- DQ_M means the delivered quantity as determined in accordance with the IA;
- FP means €9.40/mmBTU;
- FPW means the weighting attributable to the fixed price for the relevant Gas Year;
- UPW means the weighting attributable to the Upward Flexibility Contract Quantity for the relevant Gas Year;
- α means the commodity multiplier being 0.1385 bbl/mmBTU;
- $BR_{Y,M-1}$ means Brent; and
- EXR means the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

For the purposes of the above, the FPW shall be determined as:

$$FPW = \frac{14,000,000 \text{ mmBTU}}{14,000,000 \text{ mmBTU} + UFA}$$

Where:

- FPW means the fixed price weighting for the Gas Year; and
- UFA means the Upward Flexibility nominated by Enemalta for the relevant Gas Year.

For the purposes of the above, the UPW shall be determined as:

$$UPW = \frac{UFA}{14,000,000 \text{ mmBTU} + UFA}$$

The Delivered Value in respect of the Indexed Price Period

From the date that is 83 months after the Scheduled Start Date to the date that is 143 months after the Scheduled Start Date:

$$DV_M = DQ_M * \alpha * BR_{Y,M-1} * EXR$$

Where:

- DQ_M means the delivered quantity as determined in accordance with the IA;
- α means the commodity multiplier being 0.14 bbl/mmBTU;
- $BR_{Y,M-1}$ means Brent; and
- EXR means the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

The Delivered Value during the Energy and Gas Conversion Term

From the date that is 143 months after the Scheduled Start Date to the expiry of the Term or the GSA Exit Date, if earlier:

$$DV_{M-1} = DQ_M * \alpha * BR_{Y,M-1} * EXR$$

or

$$DV_{M-1} = DQ_M * AGP * EXR$$

Where:

- DQ_M means the delivered quantity as determined in accordance with the IA;
- α means the commodity multiplier being 0.14 bbl/mmBTU;
- $BR_{Y,M-1}$ means Brent;
- AGP means the actual gas price per unit of LNG expressed as US\$/mmBTU; and
- EXR means the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

Effective Commodity Price during the Energy Conversion Term

During the Energy Conversion Term, after the exercise of the Gas Exit Option, the Effective Commodity Price shall be equal to the Gas Price and calculated as:

$$GASP_M = \alpha \cdot BR_{Y,M-1} * EXR$$

or

$$GASP_M = AGP/mmBTU * EXR$$

whichever is the lower.

Where:

- α means the commodity multiplier being 0.14 bbl/mmBTU;
- $BR_{Y,M-1}$ means Brent;
- AGP means the actual gas price per unit of LNG expressed as US\$/mmBTU; and
- EXR means the exchange rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU.

Appendix 0 - Compensation Amounts for Termination after the Open Energy Delivery Date

Figure 73: Compensation amounts for termination after the Open Cycle Energy Delivery Date

Values applicable at the commencement of	Value C [Value of future cash flows excluding Value D]	Value D [Discounted Sale Option Fair Value]	Value E [Amount to be Deducted from Value C]	Value F [Amount to be Deducted from Value D]
Reference Year 1	€415,913,000	€1,209,000	-	-
Reference Year 2	€409,876,000	€2,059,000	-	-
Reference Year 3	€404,743,000	€3,011,000	-	-
Reference Year 4	€399,722,000	€4,077,000	-	-
Reference Year 5	€395,857,000	€5,271,000	-	-
Reference Year 6	€381,931,000	€6,590,000	€121,283,000	€2,050,000
Reference Year 7	€355,782,000	€8,022,000	€111,984,000	€2,292,000
Reference Year 8	€327,348,000	€9,575,000	€101,863,000	€2,562,000
Reference Year 9	€296,680,000	€11,256,000	€91,992,000	€2,863,000
Reference Year 10	€263,759,000	€13,073,000	€82,036,000	€3,201,000
Reference Year 11	€233,381,000	€15,043,000	€72,799,000	€3,578,000
Reference Year 12	€208,933,000	€17,196,000	€64,263,000	€3,999,000
Reference Year 13	€182,829,000	€19,546,000	€55,487,000	€4,470,000
Reference Year 14	€156,113,000	€22,111,000	€46,470,000	€4,997,000
Reference Year 15	€127,671,000	€24,911,000	€37,115,000	€5,586,000
Reference Year 16	€96,636,000	€27,964,000	€27,400,000	€6,244,000
Reference Year 17	€42,728,000	€31,242,000	€12,229,000	€6,980,000
Reference Year 18	€5,901,000	€34,806,000	€1,206,000	€7,802,000

Values E and F were to be deemed to be equal to zero if the GSA Exit Date had not occurred by the termination date.

On a termination date occurring after the Open Cycle Energy Delivery Date, the compensation amount was to be determined for a termination date in a given reference year in accordance with Figure 43 as follows:

$$\text{Compensation Amount} = ((C - E) \times I_v) + (D - F) - RCI$$

Where:

- I_Y is determined according to the formula:

$$I_Y = \frac{X_Y}{X_0}$$

- X_Y means HICP for the calendar month prior to the termination date, or the GSA Exit Date as the case may be; and
- X_0 means HICP for the calendar month when the Effective Date occurs.
- RCI, that is, Relevant Company Indebtedness means the aggregate of:
 - an amount equal to the aggregate principal outstanding borrowed by ElectroGas Ltd pursuant to the Financing Agreements for the purposes of financing the capital costs of the project; and
 - the aggregate amount outstanding pursuant to any working capital facilities.

The compensation amount from the above calculation was to be pro-rated on a straight line basis per part year in the event that the termination date was not on the first day of the reference year.

Appendix P - GSA Exit Price

Figure 74: GSA Exit Price

Reference GSA Exit Date	GSA Exit Reference Price	Discounted Sale Option Fair Value
First Reference GSA Exit Date	€121,283,000	€2,050,000
Second Reference GSA Exit Date	€78,957,000	€3,327,000
Third Reference GSA Exit Date	€64,263,000	€3,999,000
Fourth Reference GSA Exit Date	€55,487,000	€4,470,000
Fifth Reference GSA Exit Date	€46,470,000	€4,997,000
Sixth Reference GSA Exit Date	€37,115,000	€5,586,000
Seventh Reference GSA Exit Date	€27,400,000	€6,244,000
Eighth Reference GSA Exit Date	€12,229,000	€6,980,000
Ninth Reference GSA Exit Date	€1,206,000	€7,802,000

The GSA Exit Price was to be determined for a GSA Exit Date on a given Reference GSA Exit Date in accordance with Figure 59 and the following formula:

GSA Exit Price on a Reference GSA Exit Date = GSA Exit Reference Price x I_Y + Discounted Sale Option Fair Value

Where:

- I_Y is determined according to the formula:

$$I_Y = \frac{X_Y}{X_0}$$

- X_Y means HICP for the calendar month prior to the termination date, or the GSA Exit Date as the case may be; and
- X_0 means HICP for the calendar month when the Effective Date occurs.

The GSA Exit Price for a GSA Exit Date not on a Reference GSA Exit Date was to be determined by pro-rating the relevant GSA Exit Reference prices in Figure 44 on a straight line basis per part year. For this purpose, the GSA Exit Reference price from one year after the Ninth GSA Exit Date was to be €7,802,000.

Glossary

Term	Definition
Abandonment (IA)	a. prior to the Energy Delivery Date, ElectroGas Ltd ceasing to perform its obligations pursuant to the Supply Agreements as a consequence of which it will not be possible for the Energy Delivery Date to be achieved on or before the Last Energy Delivery Date; b. prior to the Phase 2 Gas Delivery Date, ElectroGas Ltd ceasing to perform its obligations pursuant to the Supply Agreements as a consequence of which it will not be possible for the Phase 1 Gas Delivery Date to be achieved on or before the Last Phase 1 Gas Delivery Date (or the Phase 2 Gas Delivery Date to be achieved on or before the Last Phase 2 Gas Delivery Date, as the case may be); c. at any time, ElectroGas Ltd repudiating a Supply Agreement; or d. at any time, ElectroGas Ltd's failure to resume and continue the performance of substantially all of its obligations pursuant to a Supply Agreement within a reasonable period following the cessation of a Force Majeure Event, or a Relief Event which, in each case prevented, hindered or delayed that performance
Accelerated GSA Exit	a termination option exercisable by Enemalta on written notice to ElectroGas Ltd to the Company for a GSA Exit Date on a date between the First Reference GSA Exit Date and the Second Reference GSA Exit Date, or for a GSA Exit Date after the First Reference GSA Exit Date on less than five years, but at least two years, on written notice to the ElectroGas Ltd
Acceptable Delimara 4 Average Availability	95 per cent
Acceptable Open Cycle Average Availability	80 per cent
Acceptable Gas Facilities Average Availability	95 per cent
Accession Compensation Agreement	the agreement between the Government Guarantor and ElectroGas Ltd, entered into on or about the date of the Bridge Loan Facility Agreement, regulating the liability of ElectroGas Ltd to the Government Guarantor, resulting from the accession of the Government Guarantor to this Agreement
Accession Trigger	the occurrence of one or more of the events described in the €450,000,000 Bridge Loan Facility Agreement and the BoV plc notifying the Government Guarantor of the occurrence of the same
Actual Contract Stock	the amount of LNG held by ElectroGas Ltd in the gas facilities, less heel, in m ³ plus the allowed stock in transit
Additional Charges	the payments to be made by Enemalta to ElectroGas Ltd computed in accordance with Appedix F of this report

Additional Contract Quantity	in respect of a Gas Quarter or a Gas Year, the quantity in mmbTU of gas and/or equivalent net electrical output requested by Enemalta and in respect of which Enemalta has accepted a quote from ElectroGas Ltd in accordance with the IA
Additional Contract Stock	the additional quantity of LNG stock requested by Enemalta and in respect of which Enemalta has accepted a quote from ElectroGas Ltd in accordance with the IA
Additional Contract Stock Volume	a volume of LNG delivered to ElectroGas Ltd to meet an obligation to Enemalta in accordance with the IA, if it has been agreed that an additional volume of LNG is required
Additional Costs	an increase in the costs or a reduction in the revenues attributable to any one or more Enemalta Risk Event(s) and/or Uninsurable Risk Event(s)
Affected Party	the Party that is unable to perform all or part of its obligations under the Agreements or any other Transaction Agreement by reason of a Force Majeure Event, including between the date of the IA and the Final Effective Date
Agreed Interest Rate	three month EURIBOR plus three per cent (3%) per annum
Amended Declared MW Available	in respect of an hour, the availability of Delimara 4 (expressed in MW) on a continuous and reliable basis at reference conditions, which is a revision of the Declared MW Available and declared to Enemalta by ElectroGas Ltd in accordance with the PPA, provided that ElectrGas Ltd shall not declare Delimara 4 available for any hour at a level greater than the Demonstrated Energy Availability of Delimara 4, or a level (other than zero MW) lower than Minimum Safe and Sustainable Level, in each case as applicable at that time
Ancillary Services	the frequency response and the delivery of reactive power to the network connection point
Annual Contract Quantity	the annual contract quantity was to be 14,000,000 mmbTU for each contract year, adjusted pro-rata for the first and final contract years
Annual Forecast	Enemalta shall, by not later than the 23 June prior to the commencement of each Gas Year wholly or partly in the LNG Supply Term, provide a non-binding annual forecast (the 'Annual Forecast') to ElectroGas Ltd covering each Scheduled Take Period during such whole or part Gas Year. Enemalta shall, in the Annual Forecast, specify the amount of energy measured in MWh and the amount of gas measured in mmbTU which it shall dispatch and nominate from each of Delimara 4 and the gas facilities during each such Scheduled Take Period. The amounts of energy and gas specified in the Annual Forecast shall: - for a Supply Reference Period equal the Enemalta Contract Quantity (including any Upward Flexibility Contract Quantity nominated for such period in accordance with the IA); and - provide for consumption of gas volumes during Supply Reference Periods and Gas Years in accordance with the Permitted Variable. In the event Enemalta fails to provide the Annual Forecast to ElectroGas Ltd by such date, unless otherwise agreed in writing by the Parties, the Annual Forecast shall be deemed to have been delivered to ElectroGas Ltd indicating consumption of the Enemalta Take or Pay Quantity on a straight-line basis for each Supply Reference period

Applicable Degradation Factor	the allowance for degradation to be applied to the Guaranteed Energy Availability and the Guaranteed Delimara 4 Heat Rate in each hour in each PPA Contract Year and calculated on the basis of Equivalent Operating Hours and in accordance with the degradation table and curve set out in the PPA
Approval	all such permissions, approvals, consents, authorisations, acknowledgements, registrations, licenses or permits required to be obtained from any relevant authority by ElectrGas Ltd or the contractors (as applicable) for the construction, financing, ownership, operation, and maintenance of the facilities by ElectroGas Ltd or the contractors to undertake the project in accordance with the terms of the Transaction Agreements; 'Approval' includes, without limitation, the Environmental Permit and the Berthing Rights Agreement
Approved Credit Rating	a long-term unsecured debt rating no worse than BBB+ (as determined by Standard and Poor's Rating Group), or equivalent
Armada Operator	Armada Floating Gas Services Malta Ltd, a limited liability company registered under the laws of Malta, bearing company registration number C69888
Armada Owner	Armada Floating Gas Storage Malta Ltd, a limited liability company registered under the laws of Malta, bearing company registration number C59887
Armada FSU Charter Agreement	a charter party agreement between ElectroGas Ltd and the Armada owner in relation to the steam liquefied natural gas carrier 'Wakaba Maru'
Armada FSU O&M Agreement	the operation and maintenance agreement between ElectroGas Ltd and the Armada operator in relation to the FSU
Assumed Agreements	both the FSU Charter Agreement and the FSU O&M Agreement
Assumption Date (LNG SSA)	ten days after the occurrence of a Step-In Event
Assumption Date (FSU – Enemalta Bridge Direct Agreement)	the assignment and novation of the Assumed Agreements pursuant to the FSU – Enemalta Bridge Direct Agreement shall automatically take effect on the date which is 5 days after the date of the relevant Novation Trigger Event Notice
Assumption Date (FSU-Enemalta O&M Direct Agreement, and Charter Direct Agreement)	the date of any transfer of the facilities to Enemalta or its affiliate following termination of the Implementation Agreement
Assumption Date (Plant Manning Agreement)	the date on which a Trigger Event occurs
Availability	at any time and from time to time, the capability of Delimara 4 to deliver energy to the network connection point, and 'available' shall be construed accordingly, provided that to the extent the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event or a Relief Event, Delimara 4 shall be considered 'available'
Availability Period	the period from and including the date of the Bridge Loan Facility Agreement to, and including, the Final Maturity Date
Base Capacity Charge for Gas	the base cost that relates to the Gas Facilities to be applied in calculating the Energy Availability Payment as set out in the PPA

	vii. of this definition does not apply, the Base Demonstrated MW Available shall be the greater of: A. the Initial Declared MW Available or the Amended Declared MW Available, whichever is less; and B. the Hourly Average MW Dispatch Instruction, adjusted to Reference Conditions but no greater than the Amended Declared MW Available; viii. during any hour in which Delimara 4 is in Load Following Mode where the Hourly Load Manager Dispatch Instruction is not zero, and the Metered Energy Availability at the Network Connection Point is less than the Agreed Minimum Load Manager Setpoint for a continuous block of two hundred seconds or more, save where such shortfall is occasioned or caused by a Relief Event, an Enemalta Risk Event, or an Uninsurable Risk Event, within any one hour period, the Base Demonstrated MW Available shall be the Metered Energy Availability.
Base Gas Availability Charge	the base cost to be applied in calculating the Gas Availability Payment in accordance with the GSA
Base Price Period	the period of five years commencing on the Open Cycle Energy Delivery Date, as extended in accordance with the IA
Berthing Rights Agreement	means the berthing rights agreement dated 12 December 2014 between Transport Malta and ElectroGas Ltd, as may be amended or supplemented from time to time
Billing Period	each period of one calendar month provided that: a. the first Billing Period shall commence on the earlier of the First Gas Date, the Deemed Gas Availability Date, the Open Cycle Energy Delivery Date and the Deemed Open Cycle Energy Delivery Date and end on the last day of the calendar month in which such event occurs; and b. the final Billing Period shall commence on the first day of the calendar month in which the Termination Date occurs and end on the Termination Date
Break Costs	the amount (if any) by which: a. the interest (but for the purposes of this definition only, excluding the margin element of such interest calculation) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a loan (including an overdue loan) (the amount received, in this definition, the relevant receipt) to the last day of the current interest period in respect of that loan or overdue Loan, had the relevant receipt been paid on the last day of that Interest Period; exceeds: b. the amount which that Lender acting reasonably would be able to obtain by placing an amount equal to the relevant receipt on deposit with a leading bank in the relevant interbank market for a period starting on the business day following receipt or recovery and ending on the last day of the current interest period

Brent	for a given month, the arithmetic average of the 3 values of BRIPE (US\$/bbl) for 3 months immediately preceding (and not including) the month in which the relevant month falls. Brent will be calculated by rounding to 4 decimal places
Bridge Loan Closing	the date of first drawdown of funds pursuant to the Bridge Loan Facility Agreement
Bridge Loan Facility Agreement	the facility agreement dated 28 July 2015 between ElectroGas Ltd and the Bridge Lenders in relation to the financing and refinancing of the capital costs of the project
Bridge Loan Repayment Event	a declaration by the Bridge Lenders in accordance with the Bridge Loan Facility Agreement that the principal advanced thereunder plus interest accrued thereon is immediately due and payable by ElectroGas Ltd in advance of the final maturity date specified in the Bridge Loan Facility Agreement arising from the occurrence of an Event of Default caused by the failure of ElectroGas Ltd to comply with one or more of its obligations under the Bridge Loan Facility Agreement
BRIPE	for a given month, the arithmetic average of all settlement prices (US\$/bbl), for each quoted day of that month as published on the Intercontinental Exchange of the first line ICE Brent Crude futures contract. The first settlement price will be used except on the expiration date of each maturity. On such date, the applicable pricing quotation will be rolled to the second nearby maturity. BRIPE will be calculated by rounding to four (4) decimal places
Calculation Date	the date of payment by Enemalta of amounts due to ElectroGas Ltd in accordance with the IA
Call Option Agreement	the Share Call Option Agreement between Government, Electrogas Ltd and its shareholders – GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA – dated on or around the date of the Share Transfer Agreement, that is 27 July 2015
Cargo Tank	each of the tanks used to store LNG onboard the FSU
Caused Equivalent Operating Hours	in respect of Delimara 4 the equivalent operating hours accrued by Delimara 4 at Actual Ambient Conditions as a result of Dispatch Instructions and Network Faults
Change of Control	where the ultimate holding company of any Transferor (GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA) ceases to hold a direct or indirect legal and beneficial interest in the Transferor and/or ElectroGas Ltd equal to its holding as at the date of execution of the Share Call Option Agreement
Change Request	any written request by either party for changes pursuant to the Change Control Procedure
Charter	ElectroGas Ltd and Armada Floating Gas Storage Malta Ltd are party to a Conversion and Charter Agreement dated on or about the date of the FSU O&M Agreement
Charterer	ElectroGas Ltd, a company incorporated in Malta with registered number C60775 and having its registered office at Level 3, Portomaso Business Tower, Portomaso, St Julian's, STJ 4011, Malta

Cold Start	a successful start which occurs more than 48 hours after the steam turbine generator has been last shut down, the start-up rates of which are set forth in the PPA for illustrative purposes
Combined Cycle	a mode of operation where the energy from the hot flue gases from a gas turbine generator is recovered and used to generate steam to run the steam turbine generator
Combined Cycle Acceptance Tests	the tests of the combined cycle facilities to be completed by ElectroGas Ltd in accordance with the PPA
Combined Cycle Acceptance Tests Energy Availability	the Demonstrated Energy Availability of the combined cycle facilities as demonstrated by the combined cycle performance acceptance tests in accordance with the PPA and adjusted to Extended Reference Conditions
Combined Cycle Acceptance Tests Procedures + Combined Cycle Acceptance Tests Programme	ElectroGas Ltd shall: a. prior to undertaking any the Combined Cycle Acceptance Tests, develop Combined Cycle Acceptance Tests procedures, together with a Combined Cycle Acceptance Tests Programme. The Combined Cycle Acceptance Tests Procedures and the Combined Cycle Acceptance Tests Programme shall be submitted to Enemalta for approval with a copy to the Independent Engineer not less than 3 months in advance of the start of the Combined Cycle Acceptance Tests, and: i. such Combined Cycle Acceptance Tests Procedures must list all essential measures deemed necessary for the Combined Cycle Acceptance Tests, giving outline details regarding the methods of measurement and any relevant codes, standards and procedures. The methods of measurement of other parameters (such as ambient temperature, barometric pressure and relative humidity) shall also be fully detailed in the Combined Cycle Acceptance Tests Procedures; ii. the parties to the PPA shall use all reasonable endeavours to agree the Combined Cycle Acceptance Tests Procedures and the Combined Cycle Acceptance Tests Programme 2 months prior to the planned start of the Combined Cycle Acceptance Tests. If Enemalta does not comment on or notify its approval or disapproval within 30 days of submission by ElectroGas Ltd, the Combined Cycle Acceptance Tests Procedures and the Combined Cycle Acceptance Tests Programme shall be deemed to be agreed and ElectroGas Ltd shall be entitled to proceed based on its submission. Enemalta may only withhold agreement to the Combined Cycle Acceptance Tests Procedures and Combined Cycle Acceptance Tests Programme if these are inconsistent with the terms and conditions of the PPA; and iii. if the Parties are not able to reach agreement as provided, the Independent Engineer shall determine the Combined Cycle Acceptance Tests Procedures and the Combined Cycle Acceptance Tests Programme consistent with the terms and conditions of the PPA; and b. ensure that the Combined Cycle Acceptance Tests are undertaken using gas and that gas measurements are taken before, during and after the Combined Cycle Acceptance Tests to demonstrate compliance with this requirement

	c. ElectroGas Ltd will be permitted to make any minor adjustments which may be necessary, provided that such adjustments do not in any way interfere with or prevent the commercial use of the plant or result in reducing the output or decreasing the efficiency; d. should any failure (other than of an entirely minor nature) occur in any item of the plant due to, or arising from, faulty design, materials or workmanship (but not otherwise) sufficient to prevent commercial use of the plant, the Combined Cycle Reliability Test period shall recommence according to the criteria described in (b) above for all items of plant prevented from commercial use due to the failure after ElectroGas Ltd has remedied the cause of the failure
Combined Cycle Start Date	the day on which ElectroGas Ltd notifies the O&M Contractor of the satisfaction of the Combined Cycle Acceptance Test
Commencement Date (Site Lease Deed)	the date on which the Site Lease Deed is published, that is, 16 December 2014
Commencement Date (Plant Manning Agreement)	for each employee the date being 3 weeks following the date on which the Commencement Notice is served on ERL by the O&M Contractor or the relevant date referred to in the relevant Commencement Notice, whichever is the later
Commissioning Energy Delivery Payment	the payment, at the same rate as the Energy Delivery Payment, payable in accordance with the PPA in relation to the net electrical output delivered during the commissioning of Delimara 4 and the performance of the Delimara 4 Acceptance Tests, and calculated in accordance with the PPA
Commissioning Tests	Commissioning Tests shall consist of the following commissioning tests to be performed by ElectroGas Ltd to the satisfaction of Enemalta: - complete cold wiring checks of all protection system primary and secondary wiring; - secondary injection tests on all protection devices to confirm their functionality; - protection stability check (for systems involving differential protection); - complete check of all related control functions; - HV cable insulation test as per IEC 50840; and - functional tests in relation to the remote disconnection facility operation
Commitment	- the amount of €112,500,000 to each Original Lender, that is, BoV, HSBC, KFW IPEX-Bank and SGLB, and the amount of any other commitment transferred to it under the Bridge Loan Facility Agreement; and - in relation to any other lender, the amount of any commitment transferred to it under the Bridge Loan Facility Agreement, to the extent not cancelled, reduced or transferred by it under the Bridge Loan Facility Agreement
Company Event of Default (IA)	the events of default of ElectroGas Ltd as set out in the IA

Company Mitigation Sale	1. subject to the terms of the Conversion Term Agreement, Enemalta shall on written request by ElectroGas Ltd on and from the date of commencement of the Energy and Gas Conversion Term in relation to any Company Take or Pay Deficiency: a. use reasonable efforts to market and sell to third parties (using reasonable efforts to achieve the best price available); or b. sell to a third party pursuant to a sale brokered and agreed by ElectroGas Ltd with such third party, an amount of LNG or gas in a Supply Reference Period to which Enemalta has title up to the ElectroGas Ltd supply volume; 2. ElectroGas Ltd, in a written request, shall nominate an amount of LNG or gas (as applicable) to be sold. After the GSA Exit Date, ElectroGas Ltd may only nominate gas to be sold. For the purpose of calculating the ElectroGas Ltd supply volume, LNG shall be converted to gas, and gas to LNG, at the gas/LNG conversion factor; 3. Enemalta shall pay ElectroGas Ltd a Company Supply Credit within 30 days of the date of the relevant Company Mitigation Sale; 4. The parties' rights and obligations shall survive termination of this Agreement in respect of the last Supply Reference Period immediately prior to the Termination Date
Company Supply Credit	a. the proceeds from any Company Mitigation Sale, plus reasonable and verifiable savings obtained by Enemalta (acting as a reasonable and prudent operator) as a result of such Company Mitigation Sale, including savings related to transportation, b. less reasonable, verifiable, incremental costs and taxes incurred by Enemalta (acting as a reasonable and prudent operator) as a result of such Company Mitigation Sale (including costs and taxes related to the transporting, marketing, selling, and delivering LNG and/or Gas as the case may be), c. less 2.5 per cent of the difference between the values in paragraph (a) above and the Volume Cost provided that the Company Supply Credit shall not be less than zero
Company Supply Volume	a. in respect of each Supply Reference Period after the LNG Supply Term Expiration Date other than the first Supply Reference Period after the LNG Supply Term Expiration Date and the last Supply Reference period of the Conversion Term, a quantity of LNG and/or gas equivalent to ElectroGas Ltd Take or Pay Deficiency for the previous Supply Reference Period, converted to LNG or gas at the gas/LNG conversion factor; and b. in the 3 months after the last Supply Reference period of the Conversion Term, a quantity of LNG and/or gas equivalent to ElectroGas Ltd Take or Pay Deficiency for the last Supply Reference Period of the Conversion Term, converted to LNG or gas at the gas/LNG conversion factor

	c. 20,000m³ of LNG on or after the achievement of both the Gas Availability Date and the Open Cycle Energy Delivery Date, plus any Additional Contract Stock for any period agreed in accordance with the IA, provided that following a Contract Stock Drawdown, the Contract Stock Requirement will reduce by an amount equal to the Contract Stock Utilisation until the next Contract Stock Cargo is delivered to the FSU (or until the GSA Exit Date or Termination Date if earlier)
Contract Stock Shortfall	the Actual Contract Stock being less than the Contract Stock Requirement
Contract Stock Utilisation	following a Contract Stock Drawdown, the amount of LNG (converted from gas at the gas/LNG conversion factor) equal to the gas and net electrical output (converted to gas at the Guaranteed Delimara 4 Heat Rate) delivered to Enemalta prior to the delivery of the next Contract Stock Cargo, provided that the Contract Stock Utilisation shall not be greater than 20,000m ³ plus any Additional Contract Stock during any period agreed in accordance with the IA
Contract Volume	an amount of gas and equivalent net electrical output equal to: 3,000,000mmBTU in respect of each Gas Quarter commencing on 1 October during the Fixed Price LNG Supply Term; 3,000,000mmBTU in respect of each Gas Quarter commencing on 1 January during the Fixed Price LNG Supply Term; 4,000,000mmBTU in respect of each Gas Quarter commencing on 1 April during the Fixed Price LNG Supply Term; 4,000,000mmBTU in respect of each Gas Quarter commencing on 1 July during the Fixed Price LNG Supply Term, and equal to 14,000,000mmBTU in respect of each Gas Year during the Indexed Price LNG Supply Term. Such amounts shall be pro-rated in respect of (i) part Gas Quarters in the Fixed Price LNG Supply Term, (ii) part Gas Years in the Indexed Price LNG Supply Term, and (iii) Supply Reference Periods, and may be adjusted by mutual agreement of the parties
Conversion Term	the time period during the term from the earlier of (a) the date of the commencement of the energy and gas conversion term and (b) the date of the commencement of the energy conversion term, to the termination date, and including the energy and gas conversion term and the energy conversion term
Conversion Term Agreement	an agreement in relation to the conversion term that was to amend and supplement the IA. The parties were to, no later than 6 months after the schedule start date or such later date agreed between the parties, commence negotiations on such agreement
Conversion Works	the modifications to be made to the FSU as required to ensure the FSU complies with the specifications
Creditor Rights (LNG Security of Supply Agreement)	all rights which vest in STSA by virtue of the LNG SPA, or in Armada Floating Gas Storage Malta Ltd by virtue of the FSU Charter Agreement, and any other document, against both ElectroGas Ltd and other third parties, and shall include, without limitation, any and all rights emanating from any security

Decommission	the taking down and removal of all the facilities and clearance of the leased premises, as required by the Site Lease Deed, all in accordance with applicable law, and 'Decommissioning' shall be construed accordingly
Deemed Delimara 4 Heat Rate	the rate for converting gas into net electrical output (expressed in mmBTU/MWh), being: - until the earlier of (i) the date that is six months after the Scheduled Open Cycle Energy Delivery Date and (ii) the Energy Delivery Date, the heat rate selected from the table in the PPA headed 'Heat Rate Curves - Steady State Operations Open Cycle Operation', adjusted for degradation in accordance with the PPA, for mode 3 – 80 per cent at 24 degrees Celsius; - after such period, the heat rate selected from the PPA headed 'Heat Rate Curves - Steady State Operations - Combined Cycle Operation', adjusted for degradation in accordance with the PPA, for mode 1 – 80 per cent at 24 degrees Celsius
Deemed Gas Availability Date	the later of: - the date on which the Gas Availability Date would have occurred had such delay, default or circumstance not occurred; and - the scheduled gas availability date
Deemed Gas Availability Period	in relation to a Relief Event, an Enemalta Risk Event, or an Uninsurable Risk Event, the period beginning on the Deemed Gas Availability Date and lasting for a period of time equal to the duration of the relevant Delay Period
Deemed Open Cycle Energy Delivery Date	if due to any delay, default or circumstance caused by a Relief Event, an Enemalta Risk Event or an Uninsurable Risk Event, the ElectroGas Ltd's implementation of the project is prevented, hindered or delayed, and, as a consequence, ElectroGas Ltd is unable: - to conduct Open Cycle Acceptance Tests on the date on which such Open Cycle Acceptance Tests would otherwise have occurred had such delay, default or circumstance not occurred; or - during the Open Cycle Acceptance Tests, to achieve a Demonstrated Energy Availability equal to the Tendered Open Cycle Energy Availability, the Open Cycle Acceptance Date in respect of the gas turbine generator(s) affected shall be deemed to have occurred on the date it would have occurred had such delay, default or circumstance not occurred, that is, the Deemed Open Cycle Energy Delivery Date
Delay Liquidated Damages	Delimara 4 Delay Liquidated Damages and the gas facilities Delay Liquidated Damages
Delay Period	the period by which a deadline that ElectroGas Ltd is obligated to meet pursuant to the GSA is extended in accordance with the IA due to a Relief Event, an Enemalta Risk Event or an Uninsurable Risk Event
Delimara 3	the Delimara 3 power plant comprising eight diesel engine generating units and a steam turbine including all interface equipment and any other facilities or equipment required to, inter alia, accept gas at the Delimara 3 connection point

Delimara 3 Connection Point	the delivery point to which ElectroGas Ltd is required to deliver gas pursuant to the terms of the GSA, as described therein and located at the point identified as TP5 in the relevant drawing DB5-XZ-0002 of the GSA
Delimara 3 Gas Specifications	the quality of gas to be delivered by ElectroGas Ltd pursuant to the GSA to Enemalta for Delimara 3 as set out in the IA
Delimara 3 Gas Specification Credit	the Methane Number Credit and/or the Sulphur Content Credit, as the case may be
Delimara 3 Gas Specification Credit Outstandings	any Delimara 3 gas specification credit for which ElectroGas Ltd is liable in accordance with the relevant clauses of the IA but unpaid or not otherwise credited to Enemalta in accordance with the IA, plus interest on such amount determined in accordance with the relevant clauses of the IA
Delimara 3 Phase 1	the first four diesel engines of Delimara 3 converted to gas and gasoil fuel operation
Delimara 3 Phase 2	all eight diesel engines of Delimara 3, the first four of which are converted to gas and gasoil fuel operation (Delimara 3 Phase 1), and the second four of which are converted to gas operation
Delimara 4	the electricity generating facility described in the relevant schedule of the IA, comprising all associated and auxiliary, including fuel control and other control equipment, through which ElectroGas Ltd shall supply energy to Enemalta, the weather station and all other facilities and equipment necessary for the safe, efficient and timely operation of the electricity generating facility up to the network connection point, that is the physical point on bay 3 of the 132kV switchboard within the Enemalta substation where Delimara 4 and the network shall be connected, as indicated on the relevant drawing in the Electricity Connection Agreement
Delimara 4 Acceptance Tests	the Open Cycle Acceptance Tests and/or the Combined Cycle Acceptance Tests, as the case may be
Delimara 4 Assessment Period	each of (i) the Open Cycle Energy Delivery Period; (ii) each rolling period of two consecutive assessment years, commencing on the Energy Delivery Date; (iii) the part assessment year ending on the termination date and the prior assessment year, and (iv) if greater than one year, the Force Majeure Extended Term
Delimara 4 Average Availability	the average availability of Delimara 4 over a Delimara 4 Assessment Period as calculated in accordance with the relevant clause of the PPA
Delimara 4 Connection Point	the connection point between the gas facilities and Delimara 4 at which gas is delivered
Delimara 4 Delay Liquidated Damages	liquidated damages payable should, due to a cause attributable to ElectroGas Ltd, ElectroGas Ltd fails to achieve the Open Cycle Acceptance Date of a gas turbine generator by the Scheduled Open Cycle Energy Delivery Date, or fails to achieve the Energy Delivery Date by the Scheduled Energy Delivery Date

Delimara 4 Gas Specifications	the quality of gas to be delivered pursuant to the IA by Enemalta to ElectroGas Ltd for Delimara 4 as set out in the relevant schedule of the IA
Delimara 4 Operation Phase	the period commencing from the date on which Delimara 4 has successfully completed all testing and is put in commercial operation
Delimara 4 Performance Assessment	the tests to be carried during the Energy Delivery Period as required pursuant to the PPA and the requirements for which are set out in the relevant schedule of the PPA
Delimara 4 Performance Liquidated Damages	liquidated damages payable if the Delimara 4 Average Availability for any Delimara 4 Assessment Period after the Energy Delivery Date falls below the Acceptable Delimara 4 Average Availability. These damages are payable at the rate of €375 for each percentage point shortfall in the Delimara 4 Average Availability for each day during the Delimara 4 Assessment Period, up to a maximum of €7,500 per day. The amount of such Delimara 4 Performance Liquidated Damages for any Delimara 4 Assessment Period will be reduced to the extent that Delimara 4 Performance Liquidated Damages were paid by ElectroGas Ltd for any period during that Delimara 4 Assessment Period which also formed part of the previous Delimara 4 Assessment Period
Delimara Site	the entire site indicated in the relevant schedule of the Site Lease Deed of which the leased premises forms part, situated in district known as Delimara, limits of Marsaxlokk, principally accessible from a main gate without number, in Triq il-Power Station and is bounded on the north west by Triq il-Power Station, on the north by property of Government or its successors in title, on the west in part by Triq il-Power Station and in part by the foreshore, on the south in part by the foreshore and in part by property of Government or its successors in title, on the north east by Triq Delimara, and on the east in part by Triq Delimara and in part by property of Government or its successors in title, or more accurate boundaries
Delivered Quantity of LNG	prior to the expiry of the LNG Supply Term, the delivered quantity means the quantity of LNG (expressed in mmbTU) delivered at the gas facilities during calendar month M and certified by the relevant LNG supplier to ElectroGas Ltd as delivered at the gas facilities, as evidenced by ElectroGas Ltd to Enemalta, provided that Enemalta shall have the right to audit and review the records and certificates of LNG suppliers and ElectroGas Ltd certifying such quantities of LNG actually delivered. During the Energy and Gas Conversion Term, the delivered quantity means the quantity of LNG (expressed in mmbTU), delivered at the gas facilities during calendar month M and certified by the relevant LNG supplier to Enemalta as delivered at the gas facilities, as evidenced by Enemalta to ElectroGas Ltd, provided that ElectroGas Ltd shall have the right to audit and review the records and certificates of LNG suppliers and Enemalta certifying such quantities of LNG actually delivered. In each case, the delivery quantity shall be determined using the following formula: $DQ = \frac{1}{1055.06} \times [V \times d \times Hm] - (V \times \frac{273.15 + Tr}{273.15 + Tv} \times \frac{Pv}{Pr} \times HHV_{vr})$

DQ= the quantity of LNG delivered in mmBTU, being the energy content of LNG unloaded, rounded to the nearest 10 mmBTU. For the purpose of this formula conversion factor (1/1055.056) converts the energy content of LNG delivered from MJ to mmBTU

V = the volume of LNG unloaded into the FSU in cubic metres

D = the density of LNG unloaded into the FSU in kg/cubic metres (rounded to 2 decimal places), calculated using the revised Klosek-McKinley method described in ISO 6578:1991, Section 8.3. For the purpose of this calculation, the molar mass of the individual components of LNG delivered shall be taken from ISO 6976:1995. In the application of this calculation, no intermediate rounding shall be made

Dr = relative density of the regasified LNG compared with air

Hm = Gross Heating Value (mass based) of the LNG unloaded into the FSU in MJ/Kg (rounded to 4 decimal places), calculated in accordance with ISO 6976:1995 and the reference conditions cited in the relevant schedule of the IA

Hv = Gross Heating Value (volume based) of the LNG unloaded into the FSU in MJ/m³ (rounded to 4 decimal places), calculated in accordance with ISO 6976:1995 and the reference conditions cited in the relevant schedule of the IA

Tv = the average temperature of vapour in the tanks of the LNG ship immediately after unloading the LNG into the FSU, in degrees Celsius determined in accordance with the relevant schedule of the IA

Tr = the reference metering temperature, in degrees Celsius, which is 15 degrees Celsius, as provided in the reference conditions cited in the relevant schedule of the IA

Pv = the average absolute pressure of vapour in the tanks of the LNG ship immediately after unloading the LNG into the FSU, in millibars absolute, determined in accordance with the relevant schedule in the IA

Pr = the reference pressure, in millibars absolute, which is 1013.25 millibar absolute, as provided in the reference conditions in the relevant schedule of the IA

HHVV = the vapour returned to the LNG ship during unloading of the LNG into the FSU in MJ/cubic metres (per ISO 6976:1995), which is 37.7, as provided in the reference conditions in the relevant schedule of the IA. For the purpose of this calculation, it is assumed that vapour returned consists of 100 per cent methane

Glossary

Delivered Value of LNG	the Delivered Value (DVM) means the value of the delivered quantity during each calendar month M, determined as follows: 1. the delivered value prior to the Fixed Price Period: from the date that is 15 months after the Schedule Start Date to the date that is 23 months after the Schedule Start Date, the delivered value shall be calculated as indicated in the relevant appendix of the FSU Conversion and Charter Agreement 2. the delivered value in respect of the Fixed Price Period: from the date that is 23 months after the Schedule Start Date to the date that is 83 months after the Schedule Start Date, the delivered value shall be calculated as indicated in the relevant appendix of the FSU Conversion and Charter Agreement 3. the delivered value in respect of the Indexed Price Period: from the date that is 83 months after the Schedule Start Date to the date that is 143 months after the Schedule Start Date, the delivered value shall be calculated as indicated in indicated in the relevant appendix of the FSU Conversion and Charter Agreement 4. the Delivered Value during the Energy and Gas Conversion Term: from the date that is 143 months after the Schedule Start Date to the expiry of the term or the GSA Exit Date if earlier, the delivered value shall be calculated as indicated in indicated in the relevant appendix of the FSU Conversion and Charter Agreement
Demonstrated Energy Availability	in respect of each hour, the total Energy Availability of Delimara 4 (expressed in MW) measured at the network connection point on a continuous and reliable basis as demonstrated by the Open Cycle Acceptance Tests, the Combined Cycle Acceptance Tests, or the GSA Exit Performance Test, as the case may be, and subsequently by the most recent Delimara 4 Performance Assessment, provided that the Demonstrated Energy Availability shall be capped at the Guaranteed Energy Availability of Delimara 4 (minus, after the GSA Exit Date, the GSA Exit Energy Availability Deficiency) applicable to the relevant hour
Demonstrated Gas Availability	in respect of each hour: a. the Tendered Gas Availability in respect of any hour; or b. if the Gas Availability is less than the Gas Facilities Phase 1 Acceptance Tests Availability (after the Phase 1 Gas Delivery Date but prior to the Phase 2 Gas Delivery Date) or the Gas Facilities Phase 2 Acceptance Tests Availability (after the Phase 2 Gas Delivery Date), the total Gas Availability of the gas facilities (expressed in mmBTU/h), save that, if the gas facilities have received a Proper Nomination to operate for a complete hour and the Metered Gas Availability for that hour is less than both of the Tendered Gas Availability and 95 per cent of the Hourly Average Gas Nomination, the Demonstrated Gas Availability shall be deemed to be the average Metered Gas Availability of the gas facilities in that hour, provided for the purposes of this paragraph (b), to the extent the capability of the gas facilities to make gas available at the Delimara 3 connection point is affected by an Enemalta Risk Event, an Uninsurable Risk Event or a Relief Event, the Demonstrated Gas Availability shall be deemed to be equal to the Tendered Gas Availability

Derived Stock Opening Value	The Derived Opening LNG Stock Value (GSVM) means the derived value of LNG in the FSU in euro on the first day of calendar month M calculated as follows: $GSV_M = GSV_{M-1} + DV_{M-1} - ((GU_{M-1} - F_{M-1}) \times GASP_{M-1})$ where: GSV_{M-1} = the derived value of the opening stock of LNG (expressed in €) in the FSU at the beginning of the previous calendar month M-1; DV_{M-1} = the Delivered Value during the previous calendar month M-1; $GASP_{M-1}$ = the Effective Commodity Price applicable to the previous calendar month M-1 expressed in €/mmBTU. The first Derived Opening Stock Value shall be determined as at the First Gas Date as follows: $GSV_{FGD} = \alpha \cdot BR_{Y,M-1} \cdot ACS \cdot EXR$ where: GSV_{FGD} = the derived value of the opening stock of LNG (expressed in €) in the FSU on the First Gas Date; ACS = the actual contract stock as at the First Gas Date; A = the commodity multiplier being 0.1385 bbl/mmBTU; $BR_{Y,M-1}$ = Brent; EXR = the Exchange Rate prevailing on the day the LNG is delivered to ElectroGas Ltd at the FSU
Direct Agreements	the Supply Agreement Direct Agreement, the Site Services Agreement Direct Agreement, the Electricity Connection Agreement Direct Agreement, the Site Lease Deed Direct Agreement, and the Security of Supply Agreement Acknowledgement and Consent
Dispatch Instruction	in respect of Delimara 4, an instruction to ElectroGas Ltd from Enemalta (including inload following mode) requesting delivery of energy to the network connection point and/or the provision of ancillary services at actual ambient conditions or, in the case of a Delimara 4 acceptance test at actual extended conditions, in accordance with the relevant schedule of the PPA
Distribution	a. a dividend or other distribution (in cash or in kind) in respect of any share capital of ElectroGas Ltd; b. any repayment or distribution by ElectroGas Ltd of share premium; c. the purchase, cancellation or redemption by ElectroGas Ltd of any of its share capital; d. any payment of interest, fees or other amounts or repayment of principal made by ElectroGas Ltd in respect of any financial indebtedness other than: (i) payments of project costs and operating and maintenance costs permitted in accordance with the relevant clause (Purpose) of the Bridge Loan Facility Agreement; or (ii) the repayment of financial indebtedness created pursuant to the Bridge Loan Facility Agreement or the Initial Bridge Facility; and e. any payment for services or any other development, management, royalty, advisory or other fees or costs to any sponsor or any affiliate thereof

Early Gas Contract Quantity	by the date being 4 months after the Schedule Start Date, Enemalta shall nominate the Early Gas Contract Quantity by notification to ElectroGas Ltd in writing, provided that if no such notification is given by Enemalta to ElectroGas Ltd by such date, the Early Gas Contract Quantity shall be deemed to be zero. The Early Gas Contract Quantity nominated by Enemalta shall either be zero or one cargo of LNG, provided that the size of the cargo shall be in the range of 2,500,000mmBTU to 3,000,000mmBTU, as determined by the LNG supplier
Early Gas Commencement Date	the date 16 months after the Schedule Start Date provided that such date shall not be amended for any reason, including pursuant to the IA
Early Gas Period	the period commencing on the Early Gas Commencement Date and ending on the day prior to the LNG Supply Term Commencement Date
Effective Commodity Price	the Effective Commodity Price (GASPM) means the applicable price of gas expressed in €/mmBTU in calendar month M to be charged by ElectroGas Ltd to Enemalta during any Supply Reference Period, for the purpose of calculating the Energy Delivery Payment and Gas Delivery Payment under the PPA and the GSA, and shall be calculated as indicated in Appendix F of this report
Effective Date	14 April 2015
Effective Date (Plant Manning Agreement)	the date of execution of the Plant Manning Agreement, that is, 19 February 2016
Effective Date (FSU O&M Agreement)	the date of execution of the FSU O&M Agreement, that is, 13 April 2015
Electricity Connection Agreement	an agreement between Enemalta and ElectroGas Ltd authorising the latter to connect to the Enemalta network, under specified terms and conditions
Electricity Connection Agreement Direct Agreement	an agreement between ElectroGas Ltd, Enemalta, and the Lenders in connection with the Electricity Connection Agreement, in a form consistent with the Supply Agreements Direct Agreement
ElectroGas Ltd Default Termination Value	an amount equal to the aggregate of an amount equal to the Lenders' Debt plus the Privileged Creditors Amount less, to the extent it is a positive amount,: - all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd as at Calculation Date, excluding any credit balance in respect of retained profits of ElectroGas Ltd intended for distribution to the holders of ordinary share capital but not yet distributed, and the value of any right of ElectroGas Ltd or the Lenders to receive any proceeds pursuant to letters of credit issued in connection with the project; - all amounts payable by the Lenders (or the counterparties to the interest rate or exchange rate hedging agreements included in the Financing Agreements) to ElectroGas Ltd in connection with the early termination of such hedging agreements as a result of prepayment of amounts outstanding under the Financing Agreements; and - an amount equal to amounts paid by ElectroGas Ltd to its shareholders or their affiliates during the period between the Termination Date and the Calculation Date; - provided that the calculation of the amount of Lenders Debt shall be subject to the relevant Schedule of the IA

ElectroGas Ltd Force Majeure Equity Compensation	the equity invested less: a. the Reinstatement Costs; the FSU Charter Credit plus the FSU Variations Credit, each calculated as at the termination date; b. amounts owed to Enemalta by ElectroGas Ltd under any agreement entered into between the parties in relation to the project (including pursuant to the indemnities provided in the Transaction Agreements and Delimara 3 Gas Specification Credit Outstanding); and c. the Capped Financing Costs Amount, provided that the ElectroGas Ltd Force Majeure Equity Compensation may not be negative
ElectroGas Ltd Force Majeure Fair Value	an amount calculated as: a. the aggregate, as at the termination date, of: i. an amount equal to the Lenders Debt, provided that the calculation of the amount of Lenders Debt shall be subject to the relevant Schedule; and ii. an amount equal to the ElectroGas Ltd Force Majeure Equity Compensation; provided that ElectroGas Ltd shall use reasonable endeavours to mitigate its liability in respect of any such amounts; less, to the extent it is a positive amount; b. the aggregate, as at the termination date, of: i. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd, excluding any credit balance in respect of retained profits of ElectroGas Ltd intended for distribution to the holders of ordinary share capital but not yet distributed, and the value of any right of ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued in connection with the project; and ii. all amounts payable by the lenders (or the counter-parties to the interest rate or exchange rate hedging agreements included in the Financing Agreements) to ElectroGas Ltd in connection with the early termination of such hedging agreements as a result of prepayment of amounts outstanding under the Financing Agreements
ElectroGas Ltd Supply Forecast	ElectroGas Ltd shall, within five days of receipt of the Conversion Term Annual Forecast, provide Enemalta with a forecast of demand for LNG and/or gas required for the purpose of meeting the requirements of the Conversion Term Annual Forecast and such amounts required for ElectroGas Ltd to operate, maintain and test the facilities in accordance with the Transaction Agreements, including LNG stock required as heel (the 'Company Supply Forecast'), for each month of the whole or part gas year to which the Conversion Term Annual Forecast relates
Employees (Plant Manning Agreement)	the employees of ERL, who are selected pursuant to the selection process and provided by ERL to the O&M contractor to be deployed by the O&M contractor in the performance of its obligations under the O&M Agreement in connection with the performance of ElectroGas Ltd's business

Enemalta Default Fair Value	an amount calculated as: a. the aggregate of: i. an amount equal to the Lenders Debt as at the Termination Date provided that the calculation of the amount of Lenders Debt shall be subject to the relevant schedule of the IA (or in the event of a termination of the IA by Enemalta in accordance with the relevant clause of the IA prior to the Final Effective Date, zero; ii. an amount equal to the Enemalta Default Equity Compensation as at the Termination Date (or in the event of a termination of the IA by Enemalta in accordance with the relevant clause prior to the Final Effective Date, the value as defined in the relevant schedule of the IA; iii. an amount equal to the Contractors Costs; and iv. an amount equal to the redundancy payments for employees of ElectroGas Ltd, if any; provided that ElectroGas Ltd shall use reasonable endeavours to mitigate its liability in respect of any amounts in paragraphs (iii) and (iv) above; less, to the extent it is a positive amount and only in the case of a Termination Date after the Final Effective Date: b. the aggregate, as at the Termination Date, of: i. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd excluding any credit balance in respect of retained profits of ElectroGas Ltd intended for distribution to the holders of ordinary share capital but not yet distributed, and the value of any right of ElectroGas Ltd or the Lenders to receive any proceeds pursuant to letters of credit issued in connection with the project; and ii. all amounts payable by the Lenders (or the counter-parties to the interest rate or exchange rate hedging agreements included in the Financing Agreements) to ElectroGas Ltd in connection with the early termination of such hedging agreements as a result of prepayment of amounts outstanding under the Financing Agreements
Enemalta Development Fee	an amount of €30,000,000 for services rendered to ElectroGas Ltd by Enemalta in respect of the grant of the development permit and in respect of other approvals, including costs incurred by Enemalta on behalf of ElectroGas Ltd, and for the right of ElectroGas Ltd to supply gas and power
Enemalta Direct Agreements	the Enemalta EPC Direct Agreements, the Enemalta FSU Charter Direct Agreement, the Enemalta FSU O&M Direct Agreement and the Enemalta LNG Supply Direct Agreement
Enemalta Delimara 4 EPC Direct Agreement	the agreement between Enemalta, ElectroGas Ltd, and the EPC Contractor for Delimara 4
Enemalta Direct Agreement	the Enemalta FSU Charter Direct Agreement between ElectroGas Ltd, Armada Floating Gas Services Malta Ltd and Enemalta
Enemalta EPC Direct Agreements	the Enemalta Delimara 4 EPC Direct Agreement and the Enemalta Gas Facilities EPC Direct Agreement

Enemalta Event of Default	ElectroGas Ltd shall be entitled to terminate the Project Agreements by serving a Termination Notice on Enemalta, and/or be entitled to serve a Default Notice on Enemalta, on the occurrence of any of the following after the Effective Date, save where such occurrence (i) results from a breach by ElectroGas Ltd of a Transaction Agreement or (ii) occurs (in certain circumstances) as a result of or in connection with a Natural Force Majeure Event or an Uninsurable Risk Event: a. an event of insolvency in relation to Enemalta; b. a failure by Enemalta to pay any amount due under the Transaction Agreements, where such failure continues for a period of more than 10 days after notice of such breach from ElectroGas Ltd; c. a material breach by Enemalta of any of its material obligations under the IA or any of the Project Agreements (except for the Site Services Agreement) or the Site lease Deed which has continued uncured for 30 days after notice of such breach from ElectroGas Ltd; d. expropriation, requisition, confiscation or nationalisation by the Government or Enemalta of all or a material part of the assets of or shares in ElectroGas Ltd, any Transaction Agreement, any material approval, or any material provision of any of them; c. failure to provide the Enemalta Letter of Credit to ElectroGas Ltd and/or to maintain the Enemalta Letter of Credit in accordance with the IA, and such failure is not remedied within 10 days from written notice from ElectroGas Ltd; or d. the assignment or transfer by Enemalta of its rights or obligations pursuant to a Supply Agreement in breach of the provisions thereof
Enemalta Force Majeure Equity Compensation	the equity invested less: a. the Reinstatement Costs; b. the FSU Charter Credit plus the FSU Variations Credit, each calculated as at the Termination Date; c. amounts owed to Enemalta by ElectroGas Ltd under any agreement entered into between the parties in relation to the project (including pursuant to the indemnities provided in the Transaction Agreements and the Delimara 3 Gas Specification Credit Outstanding); and d. the amount by which in the calculation of Lenders Debt at the Termination Date the principal amount of any cost overrun facility drawn by ElectroGas Ltd pursuant to the Financing Agreements prior to the Energy Delivery Date and outstanding at the Termination Date is in excess of €15,000,000; provided that the Enemalta Force Majeure Equity Compensation may not be negative
Enemalta Force Majeure Event	a. an act of prevention or act of interference by Enemalta or its affiliates, or any failure of Enemalta to comply with its obligations under a Transaction Agreement, where such act of prevention or act of interference or failure is due to a force majeure event affecting Enemalta (other than an Enemalta risk event); b. any inability of the network to receive and/or take delivery of energy at the network connection point (other than due to an Enemalta Default or an Enemalta Risk Event);

	c. any inability of Enemalta to receive and/or take delivery of gas at the Delimara 3 connection point (other than due to an Enemalta Default or an Enemalta Risk Event); d. any network fault, except where such act of prevention or act of interference or failure, or inability or network fault is occasioned, results from or is caused by a breach by ElectroGas Ltd of its obligations pursuant to the transaction agreements (excluding delivery of gas to the Delimara 3 connection point in breach of the Delimara 3 gas specifications)
Enemalta Force Majeure Fair Value	an amount calculated as: a. the aggregate of: i. an amount equal to the Lenders Debt as at the Termination Date provided that the calculation of the amount of Lenders Debt shall be subject to the relevant schedule of the IA; ii. an amount equal to the Enemalta Force Majeure Equity Compensation as at the Termination Date; iii. an amount equal to the Contractors Costs; and iv. an amount equal to the redundancy payments for employees of ElectroGas Ltd, if any; provided that ElectroGas Ltd shall use reasonable endeavours to mitigate its liability in respect of any amounts in paragraphs (iii) and (iv) above; less, to the extent it is a positive amount: b. the aggregate, as at the Termination Date, of: i. all credit balances on any bank accounts held by or on behalf of ElectroGas Ltd, excluding any credit balance in respect of retained profits of ElectroGas Ltd intended for distribution to the holders of ordinary share capital but not yet distributed, and the value of any right of ElectroGas Ltd or the lenders to receive any proceeds pursuant to letters of credit issued in connection with the project; and ii. all amounts payable by the lenders (or the counter-parties to the interest rate or exchange rate hedging agreements included in the Financing Agreements) to ElectroGas Ltd in connection with the early termination of such hedging agreements as a result of prepayment of amounts outstanding under the Financing Agreements
Enemalta FSU Charter Direct Agreement	the agreement between Enemalta, ElectroGas Ltd and the Armada owner in relation to the Armada FSU Charter Agreement
Enemalta FSU O&M Direct Agreement	the agreement between Enemalta, ElectroGas Ltd and the Armada operator in relation to the Armada FSU O&M Agreement
Enemalta Gas Facilities EPC Direct Agreement	the agreement between Enemalta, ElectroGas Ltd and an EPC contractor for the gas facilities
Enemalta Letter of Credit	a letter of credit substantially in the form set out in the relevant schedule of the IA which (1) is issued by a bank which (a) holds an approved credit rating and (b) is registered under applicable law to carry on the business of a bank in a Member State of the European Union and (2) constitutes an on demand, unconditional and irrevocable commitment to pay by the bank by which it is issued, which is to be provided by Enemalta in accordance with the relevant clause of the IA

Enemalta LNG Credit	a. the proceeds from any Enemalta Mitigation Sale (or Enemalta Scheduled Take Mitigation Sale), plus reasonable and verifiable savings obtained by ElectroGas Ltd (acting as a reasonable and prudent operator) as a result of such Enemalta Mitigation Sale (or Enemalta Scheduled Take Mitigation Sale), including savings related to transportation; b. less reasonable, verifiable, incremental costs and taxes incurred by ElectroGas Ltd (acting as a reasonable and prudent operator) as a result of such Enemalta Mitigation Sale (or Enemalta Scheduled Take Mitigation Sale), (including costs and taxes related to the transporting, marketing and selling, and delivering LNG); c. less 2.5% of the difference between the values in paragraph (a) above and the Volume Cost, provided that the Enemalta LNG Credit shall not be less than zero
Enemalta-LNG SPA Direct Agreement	the direct agreement between STSA, the Operator and Enemalta plc signed on or about the date of the LNG Security of Supply Agreement
Enemalta LNG Supply Direct Agreement	the agreement between Enemalta, ElectroGas Ltd and STSA in relation to the STSA LNG SPA
Enemalta LNG Volume	a. in respect of each Supply Reference Period after the Early Gas Commencement Date other than the first Supply Reference Period after the Early Gas Commencement Date and other than the last Supply Reference period of the LNG Supply Term and Supply Reference Periods during the Conversion Term, a quantity of LNG equivalent to two thirds of the Enemalta Take or Pay Quantity for the previous Supply Reference Period, but not exceeding the Enemalta Take or Pay Deficiency relating to the previous Supply Reference Period less Enemalta Make up Gas taken by Enemalta in respect of the relevant Enemalta Take or Pay Deficiency relating to the previous Supply Reference Period, and converted to LNG at the gas/LNG conversion factor; b. in the three months after the last Supply Reference Period of the LNG Supply Term, a quantity of LNG equivalent to the Enemalta Take or Pay Quantity for the last Supply Reference Period of the LNG Supply Term, but not exceeding the relevant Enemalta Take or pay Deficiency relating to the last Supply Reference Period, and converted to LNG at the gas/LNG conversion factor; and c. where certain circumstances of the IA apply, the volume of LNG in ElectroGas Ltd's gas facilities/FSU, less heel
Enemalta Make up Gas	the Supply Reference Period immediately following the Supply Reference Period in which the Enemalta take or pay deficiency arises (save for any Enemalta take or pay deficiencies arising in the last Supply Reference Period of the LNG Supply Term), the next gas and equivalent net electrical output taken by Enemalta up to a volume equal to one third of the Enemalta Take or Pay Quantity of the preceding supply reference period, but not exceeding the relevant Enemalta Take or Pay Deficiency. Enemalta Make Up Gas taken shall not count towards the Enemalta Take or Pay Quantity for the purpose of determining whether there is an Enemalta Take or Pay Deficiency in the Supply Reference Period in which it is taken

Enemalta Mitigation Sale	ElectroGas Ltd shall on written request by Enemalta in relation to any Enemalta Take or Pay Deficiency arising during the Early Gas Period or the LNG Supply Term: (a) use reasonable efforts to market and sell to third parties (using reasonable efforts to achieve the best price available); or (b) sell to a third party pursuant to a sale brokered and agreed by Enemalta with such third party, an amount of LNG in a Supply Reference Period to which ElectroGas Ltd has title up to the Enemalta LNG Volume
Enemalta Novation Trigger Event Notice	within 30 days after the occurrence of a Novation Trigger Event, Enemalta may deliver notice to ElectroGas Ltd, the FSU owner and the FSU operator requesting to assist and novate to Enemalta the Assumed Agreements
Enemalta Risk Event	the occurrence of any of the following: a. expropriation, requisition, confiscation, nationalisation; b. import restrictions, or the closure of harbours, docks and facilities for the use of, or services to, shipping or navigation, by any authority in Malta, except for: i. a closure of the port of Marsaxlokk due to an event described in the definition of an Uninsurable Risk Event; ii. a closure of the port of Marsaxlokk due to an event affecting Malta which would qualify as a Natural Force Majeure Event had it affected the parties; iii. a closure of harbours, docks and facilities within the sea area due to an event affecting the sea area which would qualify as a Natural Force Majeure Event had it affected the parties; iv. any closure of harbours, docks and facilities due to breach by ElectroGas Ltd of the Transaction Agreements, an approval, or the law; or v. temporary closures of the port of Marsaxlokk due to forecast adverse weather or during adverse weather; c. rationing or allocation, where imposed by law or otherwise by any authority in Malta; d. an asset claim, or e. a change in law
Enemalta Scheduled Take Mitigation Sale	ElectroGas Ltd shall, upon written request by Enemalta during the LNG Supply Term: a. use reasonable efforts to market and sell to third parties (using reasonable efforts to achieve the best price available); or b. sell to a third party pursuant to a sale brokered and agreed by Enemalta with such third party, an amount of LNG in a Scheduled Take Period to which ElectroGas Ltd has title up to the amount specified for that Scheduled Take Period in the three Month Ahead Forecast in each Scheduled Take Period
Enemalta Take or Pay Deficiency	the portion of the Enemalta Take or Pay Quantity not taken in each Supply Reference Period (after permitted reductions pursuant to the relevant clause of the IA)
Enemalta Take or Pay Quantity	for each Supply Reference Period on and from the Early Gas Commencement Date other than during the Conversion Term, there shall be calculated a quantity of gas (the 'Enemalta Take or Pay Quantity') which shall be equal to the Enemalta contract quantity applicable during that Supply Reference Period

Energy and Gas Conversion Term	the time period during the term from the date being the day after the expiry of the Indexed Price LNG Supply Term (other than where the GSA Exit Date has occurred) to the earlier of (i) the day prior to the date of commencement of the Energy Conversion Term and (ii) the Termination Date
Energy Availability	at any time and from time to time, the capacity expressed in MW at reference conditions or, in the case of the Open Cycle Acceptance Tests, the Combined Cycle Acceptance Tests and the GSA Exit Performance Tests expressed in MW at extended reference conditions, of Delimara 4, and 'Energy Available' shall be construed accordingly, provided that to the extent the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event, Delimara 4 shall be considered 'available'
Energy Availability Payment	the energy availability payment component of the tariff calculated in accordance with the relevant schedule of the PPA (or, during any Force Majeure Extended Term, the relevant Schedule of the PPA)
Energy Conversion Term	the time period during the term and from the GSA Exit Date (if any) to the Termination Date
Energy Delivery Date	if the Combined Cycle Acceptance Tests have been duly completed on or before the Last Energy Delivery Date and the Combined Cycle Acceptance Tests Energy Availability is equal to or greater than the Tendered Delimara 4 Energy Availability, then: a. the Energy Delivery Date shall be the day falling 2 days after the date upon which Enemalta receives the Combined Cycle Acceptance Tests Report from the Independent Engineer; and b. the Combined Cycle Acceptance Tests Energy Availability shall be as demonstrated by the Combined Cycle Acceptance Tests provided that if the Combined Cycle Acceptance Tests Energy Availability exceeds the Tendered Delimara 4 Energy Availability it shall be deemed to be the Tendered Delimara 4 Energy Availability
Energy Delivery Payment	the energy delivery payment component of the tariff calculated in accordance with the relevant schedule of the PPA (or during any Force Majeure Extended Term, the relevant schedule of the PPA)
Energy Delivery Period	the period from the Energy Delivery Date to the Termination Date
Enforcement Action	the termination of the: a. LNG SPA by STSA; b. FSU O&M Agreement and the FSU Charter Direct Agreement by Armada Floating Gas Services Malta Ltd, or STSA and Armada Floating Gas Services Malta Ltd, accepting or asserting that the agreements have terminated
Environmental Impact Assessment	a copy of the Environmental Impact Assessment dated 20 December 2013 prepared by Fugro in respect of the project
EPC Contract	the engineering, procurement and construction contract(s) entered into (or to be entered into) between ElectroGas Ltd and the EPC Contractor(s) for the construction of (i) Delimara 4 and (ii) the gas facilities
EPC 1 Contract	the engineering, procurement, and construction contract dated 15 December 2014 between ElectroGas Ltd and Siemens Aktiengesellschaft Österreich for the construction of the project facilities in accordance with such contract

EPC 2 Contract	the engineering, procurement and construction contract dated 23 December 2014 entered into between the ElectroGas Ltd and J&P-AVAX SA to undertake the construction of the project facilities in accordance with such contract
Equity Invested	an amount equal to the amounts invested by the shareholders and their affiliates in ElectroGas Ltd by way of share capital and/or loans in relation to the project, including the consideration paid by GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA in accordance with the Share Purchase Agreement
Equivalent Net Electrical Output	the net electrical output (calculated in MWh but expressed in mmBTU by conversion at the guaranteed Delimara 4 heat rate for the relevant hour in PPA contract year)
Equivalent Operating Hours	the sum of normal operating hours multiplied by operating factors together with the additional equivalent operating hours incurred by Delimara 4 depending on its state and the impact of events such as Trips and Starts, calculated as set out in the relevant schedule of the PPA. For the purposes of determining: a. Contract Outages in the relevant schedule of the PPA; or b. the Applicable Degradation Factor, the reference to Equivalent Operating Hours shall be deemed to be the average value of these hours of the three gas turbine generators collectively
EURIBOR	in relation to any loan: a. the applicable Screen Rate; or b. (if no Screen Rate is available for the interest period of that loan) the Interpolated Screen Rate for that loan, as of in the case of paragraph (a) above, the specified time on the quotation day for euro and for a period equal in length to the interest period of that loan and, if that rate is less than zero, EURIBOR shall be deemed to be zero
Event of Default (Bridge Loan Facility Agreement)	a. before Full Accession, any event or circumstance specified as such in the relevant clause (Events of Default) of the Bridge Loan Facility Agreement; and b. following Full Accession, any event or circumstance specified as such in the relevant schedule (Post Accession Events of Default) of the Bridge Loan Facility Agreement
Event of Insolvency	in relation to either party, the occurrence of any of the following: a. the passing of a resolution by that party for the bankruptcy, insolvency, winding-up, liquidation of, or similar proceeding against or relating to it; and/or b. the appointment of a trustee, liquidator, custodian or similar officer in relation to it or its assets, where the appointment is not set aside or stayed within 60 days of such appointment; and/or c. a court which has jurisdiction making an order to wind up or otherwise confirm the bankruptcy or insolvency of the party, where the order is not set aside or stayed within 60 days

Event of Loss	a Natural Force Majeure Event that damages or destroys the facilities causing them to be rendered unfit for normal operation in accordance with the Supply Agreements
Extended Term	notwithstanding the provisions of the relevant clause of the Site Lease Deed, which states that the term of this Deed shall be for a fixed period of 22 years from the Commencement Date unless it is terminated prematurely pursuant to any provision herein, ElectroGas Ltd shall have the right to request that the term be extended for one further period of 12 years (such period, the 'Extended Term'), subject to the same terms and conditions, which right is exercisable at any time by notice in writing to Enemalta prior to the date being 12 months prior to the expiry of the term
Facilities	(i) prior to the GSA exit date, the gas facilities and Delimara 4, and (ii) after the GSA exit date, Delimara 4
Facility	subject to the terms of the Facility Agreement, the lenders make available to the ElectroGas Ltd a term loan facility in an aggregate amount equal to the Total Commitments
Facility Agreement	means the €450,000,000 bridge term loan facility agreement to be entered into between ElectroGas Ltd, BoV plc acting as both the security trustee and the facility agent, Government as the government guarantor and the Original Lenders as set out in the relevant schedule thereto
Fairness Opinion	an opinion addressed to the Original Lenders, prepared by an international accountancy or audit firm with sufficient capability and experience, opining as to whether the terms and pricing of the Government Guarantee (including the Guarantee Fee) are conformant with prevailing market conditions for governmental guarantees of a similar nature, and acceptable to the Original Lenders in their absolute discretion
Final Effective Date	the date on which ElectroGas Ltd informs Enemalta in writing that Financial Closing has occurred
Final Maturity Date	the date falling 22 calendar months from the date of execution of the Bridge Loan Facility Agreement, that is, 28 July 2015
Finance Document	Finance Document means the Bridge Loan Facility Agreement, the Government Guarantee, any Standby Letter of Credit (or where Acceptable Credit Support is provided by way of cash collateral, the account mandate), each Fee Letter and any other document designated as such by BoV plc (acting on the instructions of the majority lenders) and ElectroGas Ltd
Finance Party	BoV plc, the Security Trustee or a Lender
Financial Closing	that day falling 5 business days after the date on which all conditions precedent in accordance with the Financing Agreements and the relevant clause of the IA have been satisfied and/or waived
Financial Model	the electronic spreadsheet-based financial model prepared by ElectroGas Ltd dated on or about the date hereof and updated from time to time by ElectroGas Ltd and consistent with the definitions of 'Project Costs' and 'Operating and Maintenance Costs'. For the avoidance of doubt, ElectroGas Ltd may allocate contingency items to other line items within the Financial Model and re-allocate any funds available to Project Costs, provided that such changes are clearly indicated and accompanied by explanatory notes

Financing Agreements	all loan agreements, notes, mortgages, indentures, security agreements, hedging agreements and other documents, if any, relating to the limited or non-recourse financing of the project (excluding any financing prior to the Final Effective Date pursuant to a temporary or bridge loan facility), or any part thereof (including any refinancing, modification or amendment thereof including working capital financing agreements and including subordinated financing; other than equity financing (or any refinancing thereof) and any credit support, or credit enhancement to ElectroGas Ltd by a holder of ordinary share capital
Financing Agreements (Share Call Option Agreement)	a fixed-term facility agreement entered into by ElectroGas Ltd pursuant to which long-term loan facilities are made available to it for the limited or non-recourse financing of the project (excluding the financing pursuant to the Bridge Loan Facility Agreement)
Financing Costs	all amounts of interest, payments, fees, commitment fees, arrangement fees, work fees, costs and expenses (other than, in each case, the principal or the equivalent of principal) due and payable by the ElectroGas Ltd to any Finance Party under any of the Finance Documents
Financing Representative	each of the Offshore Security Trustee and the FSU Financing Representative
Fiscal Energy Monitoring System	the system that shall be used to collect the data from the electrical fiscal energy meters, and which shall transmit this data to ElectroGas Ltd as indicated in the relevant schedule of the PPA
Fiscal Metering System	the 100 per cent redundant fiscal metering system, owned and installed by ElectroGas Ltd, consisting of dual backup flow meters, dual gas chromatograph system and computer system, all compliant with the requirements of ISO 7871 and the relevant schedule of the GSA, together with the corresponding (remote) data handling systems, and needed for the determination of energy amounts for billing purposes or controlling of other contract parameters, which shall be used to determine the quantity and quality of gas energy provided to Delimara 3 from the gas facilities
First Gas Date	the date on which the conditions in the relevant clause of the GSA are fulfilled and the gas facilities are able to deliver gas to Delimara 3 at the Delimara 3 connection point in compliance with the Delimara 3 Gas Specifications, disregarding: a. any inability of Enemalta to receive or take delivery of gas at the Delimara 3 connection point, unless due to failure by ElectroGas Ltd to perform its obligations pursuant to the Transaction Agreements (except any inability caused by outages of Delimara 3 due to a failure of ElectroGas Ltd to deliver gas to the Delimara 3 connection point in accordance with the Delimara 3 Gas Specifications) or a Natural Force Majeure Event affecting ElectroGas Ltd; and b. (b) any inability of ElectroGas Ltd to complete construction of the Delimara 3 connection point due to an act or omission of Enemalta
First LNG Date	the effective date for the First LNG Certificate, which shall be the later to occur of the date the FSU passed the Initial Functional Test and the Scheduled Delivery Date
First Reference GSA Exit Date	has the meaning assigned to it in the relevant schedule of the IA provided that such date shall not be amended for any reason (including pursuant to the relevant clauses of the IA)
Fixed Price LNG Supply Term	the time period during the term from the LNG Supply Term Commencement Date ending on the earlier of: (a) the Termination Date; and (b) the expiry of the period of five years commencing on the LNG Supply Term Commencement Date

Force Majeure Event (IA)	a Natural Force Majeure Event, an Enemalta Risk Event and/or an Uninsurable Risk Event, as may be applicable
Force Majeure Extended Term	any period of extension of the term in accordance with the relevant of the IA ending on the Termination Date
Force Majeure Extended Term Operating Budget	a budget prepared by ElectroGas Ltd acting as a reasonable and prudent operator based on the O&M Costs actually incurred by ElectroGas Ltd in each three-month period between the date that is 189 months and 201 months after the Open Cycle Energy Delivery Date, as duly substantiated by ElectroGas Ltd, and indexed in accordance with HICP
Forced Outage (GSA)	any period in which the gas facilities are unable to operate at or above 80 per cent of the Gas Facilities Phase 2 Acceptance Tests Availability, save where any such inability is due to: (i) a Relief Event; (ii) a Non-Compliant Nomination; (iii) an Enemalta Risk Event; or (iv) an Uninsurable Risk Event
Forced Outage (PPA)	any period in which Delimara 4 is unable to operate, including the inability to operate in accordance with a Dispatch Instruction, save where Delimara 4 being unable to operate or any such inability to operate in accordance with a Dispatch Instruction is due to: (i) a Contract Outage; (ii) a Relief Event; (iii) a Non-Compliant Dispatch Instruction; (iv) an Enemalta Risk Event or (v) an Uninsurable Risk Event
FSU Charter Credit	an amount determined in accordance with the relevant schedule of the IA
FSU Charter Agreement	a charter party agreement between the FSU owner and ElectroGas Ltd, including the Armada FSU Charter Agreement, in relation to the FSU
FSU Charter Variations Credit	an amount equivalent to the aggregate amount by which, assuming the Armada FSU Charter Agreement has terminated on the Termination Date (irrespective of whether the Armada FSU Charter Agreement has, in fact, terminated), Enemalta's liability to ElectroGas Ltd for contractors' costs in relation to the Armada FSU Charter Agreement has (or would have, had the FSU Charter Agreement been terminated, or contractors' costs had been payable) increased since the date of the IA due to FSU Charter Variations (excluding Permitted FSU Charter Variations) less an amount equal to 8 per cent of the amounts payable by ElectroGas Ltd to the Armada owner on termination of the Armada FSU Charter Agreement due to a default of ElectroGas Ltd under the Armada FSU Charter Agreement, assuming the Armada FSU Charter Agreement has terminated on the Termination Date for such reason (irrespective of whether the Armada FSU Charter Agreement has, in fact, terminated), provided that: - if the Armada FSU Charter Agreement has terminated prior to the Termination Date, and (i) no contractors' costs are payable by Enemalta to ElectroGas Ltd in accordance with the IA in respect of amounts payable by ElectroGas Ltd to Armada Owner, and (ii) Enemalta has no obligation in accordance with the Enemalta FSU Charter Direct Agreement to take an assignment and novation of the Armada FSU Charter Agreement (or enter into a new FSU Charter Agreement with the Armada owner, as the case may be) if it acquires the facilities, then the FSU Charter Variations Credit shall be deemed to be zero; and - the FSU Charter Variations Credit may not be less than zero
FSU Documents	the FSU Conversion Charter Agreement and the FSU O&M Agreement

FSU Financing	ElectroGas Ltd acknowledges that the FSU may be financed by Armada Floating Gas Services Malta Ltd on a non-recourse project finance basis ('FSU Financing') and Armada Floating Gas Services Malta Ltd may need to mortgage the FSU and to provide other customary security, including an assignment of its rights under the FSU O&M Agreement. ElectroGas Ltd will cooperate with Armada Floating Gas Services Malta Ltd to help facilitate the FSU Financing, including providing consent to the assignment of the FSU O&M Agreement and other confirmations as reasonably required by the lenders involved in the FSU Financing. The parties acknowledge that, as part of the FSU Financing, the parties and their respective lenders may enter into a single direct agreement governing the relationship between all parties. The parties will cooperate with each other's lenders to facilitate the entry into such direct agreement
FSU Financing Representative	the BoV plc or security trustee appointed on behalf of the lenders to the Armada Floating Gas Storage Malta Ltd, such appointment as notified by the FSU owner to the other parties in accordance with the Enemalta FSU Charter Direct Agreement
FSU Lenders' Direct Agreement	the direct agreement between ElectroGas Ltd and its lenders (represented by the offshore security trustee) and Armada Floating Gas Services Malta Ltd
FSU O&M Agreement	the operation and maintenance agreement between Armada Floating Gas Services Malta Ltd and ElectroGas Ltd, including the Armada FSU O&M Agreement, in relation to the FSU
FSU O&M Lenders' Direct Agreement	The direct agreement between ElectroGas Ltd and its lenders (represented by the offshore security trustee) and Armada Floating Gas Services Malta Ltd
FSU O&M Variations Credit	an amount equal to the following: $FOVC = \sum_{t=0}^N \frac{\{((OPEX_A - OPEX_p) - (1.05 * OPEX_o) * 365)\} * N}{(1 + R)^t}$ where: FOVC means the FSU O&M Variations Credit OPEX_A means OPEX determined in accordance with the Armada FSU O&M Agreement as at the Termination Date OPEX_p means the proportion of OPEX determined in accordance with the Armada FSU O&M Agreement as at the Termination Date due to increases in OPEX since the date of the IA as a result of permitted FSU O&M Variations OPEX_o means OPEX determined in accordance with the Armada FSU O&M Agreement as at the date of the IA, as indexed in accordance with the Armada FSU O&M Agreement N means the number of whole or part years from the Termination Date to the date of expiry of the Armada FSU O&M Agreement (disregarding any earlier termination of the Armada FSU O&M Agreement); and R means 0.06 provided that the FSU O&M Variations Credit shall be deemed to be zero if: a. the Armada FSU O&M Agreement has terminated prior to the Termination Date, and (i) no contractors' costs are payable by Enemalta to ElectroGas Ltd in accordance with the IA in respect of amounts payable by ElectroGas Ltd to Armada Operator, and (ii) Enemalta has no obligation in accordance with the Enemalta FSU O&M Direct Agreement to take an assignment and novation of the Armada FSU O&M Agreement (or enter into a new FSU O&M Agreement with the Armada operator, as the case may be) if it acquires the facilities; or

Gas Availability	the maximum ability of the gas facilities to deliver gas at the Delimara 3 connection point in compliance with the Delimara 3 Gas Specifications when demanded measured in mmbTU/h, and 'Available' shall be construed accordingly, provided that to the extent the capability of the gas facilities to make gas available at the Delimara 3 connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event, the gas facilities shall be considered 'Available'. To the extent that the gas facilities have delivered non-conforming gas (save where Enemalta has knowingly elected to accept such non-conforming gas in accordance with the relevant clause of the GSA) or the gas facilities are unable to deliver gas at the Delimara 3 connection point in compliance with the Delimara 3 Gas Specifications, the gas facilities shall be deemed not to be available
Gas Availability Date	the earlier of the date on which the Phase 1 Gas Delivery Date and the Open Cycle Energy Delivery Date occurs
Gas Availability Payment	the component of the tariff that relates to ensuring that gas can be delivered at the Delimara 3 connection point
Gas Availability Payment Commencement Date	the later of: a. the date that is Y months after the First Gas Date; b. the Scheduled Gas Availability Date; and c. the Gas Availability Date. For the purposes of this definition, if the Aggregate Deemed Gas Availability Periods: a. are equal to or less than 2 months, 'Y' equals 2 months less the Aggregate Deemed Gas Availability Periods; and b. are greater than two 2 months, 'Y' equals zero months
Gas Availability Period	the period from the Gas Availability Date to the Termination Date or the GSA Exit Date, if earlier
Gas Delivery Payment	the component of the tariff that relates to the commodity
Gas Energy	the calculated energy in mmbTU (as obtained from the Fiscal Metering System) based on the higher heating value (HHV) of the gas being delivered to Enemalta by ElectroGas Ltd
Gas Facilities	the facilities including the FSU necessary to receive and store LNG (together with the associated marine infrastructure, including mooring facilities for floating storage, wharfs and jetties) and to re-gasify, compress or decompress as appropriate, condition, regulate, deliver and meter gas to the Delimara 3 connection point in accordance with the GSA and to the Delimara 4 connection point, and all associated plant, equipment and connection, such facilities being a part of ElectroGas's combined facilities that simultaneously provide the gas required to deliver gas in accordance with the terms of the GSA and energy in accordance with the terms of the PPA
Gas Facilities Acceptance Tests	the Gas Facilities Phase 1 Acceptance Tests and/or the Gas Facilities Phase 2 Acceptance Tests, as the case may be

Gas Facilities Assessment Period	each of (i) the period commencing on the Gas Availability Date and ending on the Energy Delivery Date; (ii) each period of two consecutive Assessment Years, commencing on the Energy Delivery Date; (iii) the part Assessment Year ending on the Termination Date and the prior Assessment Year; and (iv) if greater than one year, the Force Majeure Extended Term
Gas Facilities Average Availability	in relation to any period, the average availability of the gas facilities over that period as calculated in accordance with the relevant clause of the GSA
Gas Facilities Delay Liquidated Damages	the delay liquidated damages payable by ElectroGas Ltd pursuant to the relevant clauses of the GSA
Gas Facilities Performance Assessment	the tests indicated in the relevant schedule of the GSA which may be required from time to time to demonstrate the Demonstrated Gas Availability of the gas facilities in accordance with the relevant clause of the GSA
Gas Facilities Performance Liquidated Damages	if the Gas Facilities Average Availability for any Gas Facilities Assessment Period falls below the Acceptable Gas Facilities Average Availability, then ElectroGas Ltd shall pay liquidated damages ('Gas Facilities Performance LDs') as established in the relevant clause of the GSA
Gas Facilities Phase 1 Acceptance Tests	the acceptance tests of the gas facilities in respect of Delimara 3 Phase 1 to be completed by ElectroGas Ltd by the Phase 1 Gas Delivery Date in accordance with the relevant schedule of the GSA
Gas Facilities Phase 1 Acceptance Tests Availability	the Gas Availability of the gas facilities as demonstrated by the Gas Facilities Phase 1 Acceptance Tests in accordance with the relevant clauses and the procedures set out in the relevant schedule of the GSA
Gas Facilities Phase 1 Acceptance Tests Report	a report produced by the Independent Engineer in accordance with the relevant schedule of the GSA confirming that the Gas Facilities Phase 1 Acceptance Tests for the Gas Facilities Phase 1 have been duly completed and containing the results of the Gas Facilities Phase 1 Acceptance Tests, together with all supporting information and documentation required to substantiate the results of such Gas Facilities Phase 1 Acceptance Tests
Gas Facilities Phase 1 Functional Tests	these tests shall assess the following capabilities of the gas facilities: a. protection, control, and monitoring systems the correct operation of all mechanical and electrical protective, control and monitoring systems and redundant system changeover shall be verified. b. LNG storage capacity measurements shall be carried out to demonstrate that the capacity of the gas storage tanks is 125,000m³. For the avoidance of doubt, the storage tanks need not be full with gas at the time of taking the Gas Facilities Acceptance Tests
Gas Facilities Phase 1 Performance Acceptance Tests	these Tests shall measure performance against the operating parameters as set out in the relevant schedule to the GSA and will comprise of the following tests: a. Gas Facilities Phase 1 Acceptance Tests Availability of the gas facilities during this test, the gas facilities shall be operated and tested together with all auxiliary plant, equipment and services required for its safe and efficient operation at a stable capacity for a continuous period of 2 hours the load capacity during testing shall be set by the prevailing operation of Delimara 3 Phase 1 at any given time

	for the purpose of the test, the Gas Facilities Phase 1 Acceptance Tests Availability shall be the average capacity of the gas facilities, calculated by dividing (i) the total gas delivered to and measured as above at the Delimara 3 connection point during the 2-hour test period by (ii) 2 hours b. Ramp Up and Ramp Down Enemalta will demand gas at the Ramp Up Rate applicable for a start and at the Ramp Down Rate as set out in the relevant schedule of the GSA. An emergency shutdown will also be tested; i. the times elapsed from start to full capacity and then to fully stopped shall be recorded to demonstrate that the gas facilities can achieve the Ramp Up Rate and the Ramp Down Rate, both as set out in the relevant schedule of the GSA
Gas Facilities Phase 1 Reliability Tests	a. a Forced Outage prior to completion of the Gas Facilities Phase 1 Reliability Test will require the Gas Facilities Phase 1 Reliability Tests to be repeated in their entirety; b. any failure of Delimara 3 Phase 1 ability to take gas prior to completion of the reliability tests shall not require the reliability tests to be repeated provided the gas conditions are maintained at the Delimara 3 connection point
Gas Facilities Phase 2 Acceptance Tests	the acceptance tests of the gas facilities in respect of Delimara 3 Phase 1 and Delimara 3 Phase 2 to be completed by ElectroGas Ltd by the Phase 2 Gas Delivery Date in accordance with the relevant schedule of the GSA
Gas Facilities Phase 2 Acceptance Tests Availability	the gas availability of the gas facilities as demonstrated by the Gas Facilities Phase 2 Acceptance Tests in accordance with the relevant clauses and the procedures set out in the relevant schedule of the GSA
Gas Facilities Phase 2 Acceptance Tests Report	a report produced by the Independent Engineer in accordance with the relevant schedule of the GSA confirming that the Gas Facilities Phase 2 Acceptance Tests for the Gas Facilities Phase 2 have been duly completed and containing the results of the Gas Facilities Phase 2 Acceptance Tests, together with all supporting information and documentation required to substantiate the results of such Gas Facilities Phase 2 Acceptance Tests
Gas Facilities Phase 2 Performance Acceptance Tests	these tests shall measure performance against the operating parameters as set out in the relevant schedule to the GSA and will comprise of the following tests: a. Gas Facilities Phase 2 Acceptance Tests Availability of the gas facilities. During this test, the gas facilities shall be operated and tested together with all auxiliary plant, equipment and services required for its safe and efficient operation at a stable capacity for a continuous period of 2 hours. The load capacity during testing shall be set by the prevailing operation of Delimara 3 Phase 2 at any given time. This measured capacity shall then be corrected to determine the full load capacity. For the purpose of the test, the Gas Facilities Phase 2 Acceptance Tests Availability shall be the average capacity of the gas facilities, calculated by dividing (i) the total gas delivered to and measured as above at the Delimara 3 connection point during the 2-hour test period by (ii) 2 hours. b. Ramp Up and Ramp Down i. Enemalta will demand gas at the Ramp Up Rate applicable for a start and at the Ramp Down Rate as set out in the relevant schedule of the GSA. An emergency shutdown will also be tested;

	ii. the times elapsed from start to full capacity and then to fully stopped shall be recorded to demonstrate that the gas facilities can achieve the Ramp Up Rate and the Ramp Down Rate, both as set out in the relevant schedule of the GSA
Gas Facilities Phase 2 Reliability Tests	a. during the Gas Facilities Phase 2 Reliability Test, the gas facilities shall be operated and tested together with all auxiliary plant, equipment and services required for its stable, safe and efficient operation, by being started fully remotely and automatically and remaining in operation at the load capacity set by the prevailing operation of Delimara 3 Phase 2 at any given time, or other reduced loads as may be agreed between ElectroGas Ltd and Enemalta, for a continuous 72-hour period under a variety of demanded gas delivery rates; b. a Forced Outage prior to completion of the Gas Facilities Phase 2 Reliability Test will require the Gas Facilities Phase 2 Reliability Tests to be repeated in their entirety; c. any failure of Delimara 3 Phase 2 ability to take gas prior to completion of the reliability tests, shall not require the reliability tests to be repeated provided the gas conditions are maintained at the Delimara 3 connection point
Gas Price (PPA)	a. on or prior to the GSA Exit Date the effective gas price pursuant to the GSA in €/mmBTU, as calculated in the gas price (GSA), and b. after the GSA Exit Date, means the Effective Commodity Price GASPM
Gas Price (GSA)	the effective Gas Price, in €/mmBTU is calculated as indicated in the relevant schedule of the GSA (Appendix F in this report refers) during any Force Majeure Extended Term, the effective gas price, in €/mmBTU shall equal $GASP_{Y,M}$
Gas Price (IA)	the gas price in €/mmBTU, as calculated in the relevant schedule of the GSA and, following the GSA Exit Date, calculated in accordance the Effective Commodity Price determined in accordance with the relevant schedule of the IA
Gas Supply Agreement	the agreement executed on the same date as the IA (14 April 2015) between ElectroGas Ltd and Enemalta for the supply of gas to be used by Delimara 3 to generate electric power
Gas Turbine Generator	each of the three units comprising a Siemens SGT-800 gas turbine with ancillary equipment, control systems and instrumentation
Gas Turbine Generator Average Availability	the average availability of a gas turbine generator over the open cycle energy delivery period as calculated in accordance with the relevant clause of the PPA
Government Guarantee	the guarantee to be granted by Government in favour of BoV in support of the ElectroGas Ltd's obligations under the terms of the Bridge Loan Facility Agreement
Government Guarantor	the Government of Malta, acting through the Ministry for Finance
Government Novation Agreement	an agreement substantially in the form of the relevant appendix of the FSU – Enemalta Bridge Direct Agreement
Government Supported Amounts	at any time, an amount equal to 80 per cent of all principal, interest, default interest, fees, costs, expenses and any other sums which are, at such time, due, owing or payable or which are expressed to be due, owing or payable to the Finance Parties from or by ElectroGas Ltd under or pursuant to any provision of the Finance Documents

GSA Contract Year	each 12-month period commencing at 00:00 hours on 1 January and ending at 24:00 hours on 31 December of the same calendar year, provided that the first GSA Contract Year shall commence at 00:00 hours on the First Gas Date and shall end at 24:00 hours on the following 31 December, and the last GSA Contract Year shall end on the Termination Date or the GSA Exit Date, if earlier
GSA Exit	theterminationoftheGSA,theacquisitionofthegasfacilitiesbyEnemaltaandthepayment of the GSA Exit Value in accordance with the relevant clause of the IA
GSA Exit Date	the date after the First Reference GSA Exit Date of the termination of the GSA in accordance with the relevant clause of the IA
GSA Exit Energy Availability	the total Energy Availability of Delimara 4 (expressed in MW) measured at the network connection point on a continuous and reliable basis as demonstrated by a GSA Exit Performance Test with the glycol loop out of operation in accordance with the relevant clause and the procedures set out in the relevant schedule of the PPA and adjusted to reference conditions
GSA Exit Energy Availability Deficiency	the Demonstrated Energy Availability with the glycol loop in operation as at the date of a GSA Exit Performance Test minus the GSA Exit Energy Availability, provided that the GSA Exit Energy Availability Deficiency shall be equal zero in the event that the glycol loop is operating, and made available to ElectroGas Ltd in accordance with its design on and from the GSA Exit Date
GSA Exit MW Available	in an Hour, an amount in MW equal to: - zero during a Contract Outage or when the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event; or - where paragraph (a) above does not apply $MW_D = \frac{DMW}{G_H - D} \times D$ Where: MW_D is the GSA Exit MW Available; DMW is the Base Demonstrated MW Available; G_H is the Guaranteed Energy Availability; and D is the GSA Exit Energy Availability Deficiency
GSA Exit Novation Date	if Enemalta exercises its option to terminate the GSA with ElectroGas Ltd through an Accelerated GSA Exit in accordance with the relevant clause of the IA, ElectroGas Ltd's rights and obligations pursuant to the LNG SPA shall be assigned and novated from ElectroGas Ltd to Enemalta in accordance with this clause. Such assignment and novation shall take effect in accordance with this clause on the GSA Exit Date, or such later date determined in accordance with the IA. STSA undertakes not to terminate the LNG SPA prior to the GSA Exit Novation Date, provided all outstanding amounts have been settled in full and STSA has not received from a third party a notice of assignment or novation of the LNG SPA which predates the GSA Exit Novation Date
GSA Exit Option	enemalta shall have the option to terminate the GSA on or after the First Reference GSA Exit Date

GSA Exit Performance Test	a test to verify the performance of Delimara 4 with the glycol loop out of operation. Provisions related to this test are provided in the relevant schedule of the PPA
GSA Exit Price	an amount determined in accordance with the relevant schedule of the IA (Appendix O of this report refers)
GSA Exit Reference Price	has the meaning assigned to it in the relevant schedule of the IA
GSA Exit Value	means an amount calculated as the aggregate, as at the GSA Exit Date, of: a. an amount equal to the GSA Exit Price less the aggregate of: i. Reinstatement Costs in respect of the gas facilities; and ii. the FSU Charter Credit calculated as at the GSA Exit Date, b. break costs, charges, penalties, premia and expenses due and payable by ElectroGas Ltd to its Lenders, including any such amounts arising pursuant to closing out, settling or unwinding any positions under any hedging agreements included in the Financing Agreements, in each case arising as a result of the GSA Exit; c. an amount equal to the contractors costs arising as a result of the GSA Exit, save for any contractors costs which relate to LNG suppliers and LNG Supply Agreements; d. an amount equal to the redundancy payments for employees of ElectroGas Ltd arising as a result of the GSA Exit, if any; and e. on an Accelerated GSA Exit, contractors costs which relate to LNG suppliers and LNG Supply Agreements, provided that ElectroGas Ltd shall use reasonable endeavours to mitigate its liability in respect of any amounts in paragraphs (c), (d) and (e) above; less, to the extent it is a positive amount the aggregate, as at the GSA Exit Date, of all amounts payable by counter-parties to the interest rate or exchange rate hedging agreements included in the Financing Agreements, in each case arising as a result of the GSA Exit (including through an Accelerated GSA Exit) and as a result of prepayment of amounts outstanding under the Financing Agreements
Guarantee Fee	the fee to be charged by Government for the provision of the Government Guarantee Deed
Guaranteed Combined Cycle Heat Rate	the heat rate expressed in mmbTU/MWh: $R_H = R_0 \cdot g_{EOH}$ where: R_H means the Guaranteed Combined Cycle Heat Rate for hour H; R_0 means the heat rate selected from the relevant schedule of the PPA headed 'Heat Rate Curves – Steady State Operations – Combined Cycle Operation', provided that: a. save during a Contract Outage, or when the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event, for Dispatch Instructions equivalent to the declared MW available, R_0 shall be deemed selected from such schedule for mode 1-100 per cent at 24 degrees Celsius; b. for Dispatch Instructions less than the declared MW available, or during a Contract Outage, or when the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event, R_0 shall be selected for the actual operating mode from such schedule at actual ambient conditions;

	g_{EOH} means the Applicable Degradation Factor; H means Hour in question, and subject to further adjustment in accordance with the relevant clause of the PPA
Guaranteed Delimara 4 Heat Rate	the rate for converting gas into net electrical output (expressed in mmbTU/MWh), being the guaranteed open cycle heat rate until the earlier of (i) the date that is six months after the Scheduled Open Cycle Energy Delivery Date and (ii) the Energy Delivery Date, after which time it shall be the Guaranteed Combined Cycle Heat Rate
Guaranteed Energy Availability	in respect of each hour, the total export Energy Availability of Delimara 4 (expressed in MW of electrical energy) which ElectroGas Ltd commits to make available at the network connection point on a continuous and reliable basis in conformity with the operating parameters at Extended Reference Conditions. The Guaranteed Energy Availability will be calculated and adjusted for degradation in accordance with the following formula: $G_H = A_0 \cdot f_{EOH}$ where: G_H means the Guaranteed Energy Availability for hour H; A_0 means during the Energy Delivery Period, the Combined Cycle Acceptance Tests Energy Availability, or during the Open Cycle Energy Delivery Period, the Open Cycle Acceptance Tests Energy Availabilities of the gas turbine generators; f_{EOH} means the applicable degradation factor; H means the hour in question
Guaranteed Open Cycle Heat Rate	The heat rate expressed in mmbTU/MWh: $R_H = R_0 \cdot g_{EOH}$ where: R_H means the Guaranteed Open Cycle Heat Rate for hour H R_0 means the heat rate selected from the relevant schedule of the PPA headed 'Heat Rate Curves – Steady State Operations – Open Cycle Operation', provided that: - save during a Contract Outage, or when the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event or a Relief Event, for dispatch instructions equivalent to the declared MW available, R_0 shall be deemed selected from such table for mode 3 – 100 per cent at 24 degrees Celsius; - for Dispatch Instructions less than the Declared MW Available, or during a Contract Outage, or when the capability of Delimara 4 to make energy available at the network connection point is affected by an Uninsurable Risk Event, an Enemalta Risk Event, or a Relief Event, R_0 shall be selected for the actual operating mode from such table at actual ambient conditions, g_{EOH} means the applicable degradation factor; H means hour in question, and subject to further adjustment in accordance with the relevant clause of the PPA
Heel	a volume of LNG retained by ElectroGas Ltd aboard the FSU, acting as a reasonable and prudent operator, sufficient to permit the FSU to maintain a temperature of no higher than minus 130 Celsius

HICP	the Harmonised Index of Consumer Prices, which excludes tobacco, published by the European Central Bank (Euro area (17 countries)) or, if such index is not available or if the parties agree otherwise, then another mutually agreed index, or in the event of a failure to agree then such comparable index or method of calculation as shall be determined by an Expert who shall be appointed by the parties
Hire	the daily rate of hire shall consist of a fixed charter hire element at USD\$ 32,000, exclusive of VAT and import duties
Hot Start	a successful start which occurs not more than eight hours after the steam turbine generator has been last shut down, the start-up rates of which are set forth in the relevant schedule of the PPA for illustrative purposes
Hourly Availability Weight	for any Hour, the value of Hourly Availability Weight (WH) as set out in the table of Hourly Availability Weights as initially set out in the relevant schedule of the PPA, but provided by Enemalta to ElectroGas Ltd from time to time in accordance with the relevant schedule of the PPA
Hourly Average Gas Nomination	for any hour, the average number of mmBTU/h to be nominated during the relevant hour (being the average gas energy nominated divided by the time interval of 1 hour), provided that during hours in which the nominations include instructions to vary the delivery of gas energy to the Delimara 3 connection point between the levels of zero per cent and 100 per cent of the tendered gas availability, the average shall be estimated by linear interpolation using the Ramp Up Rates and Ramp Down Rates as specified in the relevant schedule of the GSA
Hourly Average MW Dispatch Instruction	for any hour, the average number of MW to be dispatched in accordance with the dispatch instructions during the relevant hour (being the average energy to be dispatched divided by the time interval of 1 hour), provided that during hours in which the dispatch instructions include instructions to vary the delivery of energy to the network connection point, the average shall be estimated by linear interpolation using the Run Up Rates, Ramp Up Rates, Ramp Down Rates and Shut Down Rates as specified in the relevant schedule of the PPA
Implementation Agreement	the Agreement dated 14 April 2015 between Enemalta and ElectroGas Ltd in relation to the implementation of the project
Imported Electricity	electricity drawn from the network by ElectroGas Ltd at the network connection point in accordance with the relevant clause of the PPA, metered by the electricity meters
Independent Engineer	an independent consulting engineer appointed prior to the Scheduled Start Date by ElectroGas Ltd with the prior written approval of Enemalta to act jointly on behalf of ElectroGas Ltd and Enemalta, for the purposes of monitoring, inter alia, the construction of the facilities and the performance of the acceptance tests
Indexed Price LNG Supply Term	the time period during the term from the day following the expiry of the Fixed Price LNG Supply Term and ending on the earlier of: (a) the termination date; (b) the GSA Exit Date; and (c) the later of the LNG Supply Term Expiration Date or any extension thereof determined in accordance with the relevant clause of the IA
Initial Bridge Facility	the €110,000,000 initial bridge facility agreement entered into on 18 December 2014 between ElectroGas Ltd and BoV in its capacity as lender, as amended on 8 May 2015 to extend the initial bridge facility to €137,500,000

Initial Declared MW Available	in respect of Delimara 4 and in respect of an hour, the total energy availability of Delimara 4 (expressed in MW) which is declared to Enemalta by ElectroGas Ltd to be available at the network connection point on a continuous and reliable basis at reference conditions or, failing any such declaration, is deemed to have been declared to be available in accordance with the PPA, provided that ElectroGas Ltd shall not declare Delimara 4 available for any hour at a level greater than the demonstrated energy availability of Delimara 4, or a level (other than zero MW) lower than minimum safe and sustainable level, in each case as applicable at that time
Initial Shareholders	the persons holding ordinary share capital in ElectroGas Ltd as at 19 December 2014
Initial Term	a fixed period of 22 years from the commencement date
Interface Agreement	the Construction, Management and Interface Agreement entered into between ElectroGas Ltd, Siemens Aktiengesellschaft Österreich, J&P-AVAX SA, the FSU owner, and URS Infrastructure and Environment UK Ltd, dated 12 December 2014
Last Energy Delivery Date	the date falling 180 days after the Scheduled Energy Delivery Date, as such date may be amended from time to time in accordance with the Transaction Agreements
Last Open Cycle Energy Delivery Date	the date falling 180 days after the Scheduled Open Cycle Energy Delivery Date, as such date may be amended from time to time in accordance with the Transaction Agreements
Last Phase 1 Gas Delivery Date	the date which falls 180 days after the Scheduled Phase 1 Gas Delivery Date
Last Phase 2 Gas Delivery Date	the date which falls 180 days after the Scheduled Phase 2 Gas Delivery Date
Lay Down Areas	the areas indicated in the relevant schedule of the Site Lease Deed, the use of which is subject to the terms and conditions set out therein
Leased Premises	Site A, Site B, Site C, Site D, and Site E, provided that Site E shall only form part of the leased premises when the land reclamation process, if any, is completed. And for the purposes of the Project Agreements, not including the sea area nor the part of the leased premises relating to the gas facilities on and from the GSA Exit Date
Lenders Direct Agreement	the direct agreement to be executed between the O&M Contractor, ElectroGas Ltd and the lenders in connection with the O&M Agreement
Letters of Credits	the letters of credit or other credit support which is provided by GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, (or any one or more of them) to the lenders, as security for the amounts to be drawn under the Bridge Loan Facility Agreement
LNG Specifications	the quality of LNG to be delivered pursuant to the IA by Enemalta to ElectroGas Ltd, as set out in the relevant schedule of the IA
LNG Supply Agreement	an agreement for the supply of LNG between an LNG supplier and ElectroGas Ltd
LNG Supply Term	both of the Fixed Price LNG Supply Term and the Indexed Price LNG Supply Term
LNG Supply Term Commencement Date	the date that is 24 months after the Scheduled Start Date, provided that such date shall not be amended for any reason (including pursuant to the IA)

Network Code	the document issued and published by Enemalta as the designated distribution operator, in October 2013 Version 1 and approved by the relevant authority pursuant to applicable law, as may be amended from time to time
Network Connection Point	the physical point on bay 3 of the 132kV switchboard within the Enemalta substation where Delimara 4 and the network shall be connected, as indicated in the relevant schedule to the Electricity Connection Agreement
Non-Conforming Gas	any known or anticipated deliveries of gas that do not meet, or will not meet, the Delimara 3 gas specifications
Non-Conforming Supply	gas or LNG which do not meet the LNG specifications or the Delimara 4 gas specifications (as the case may be)
Normal Operation	any hour other than an hour when any generating unit of either Delimara 3 or Delimara 4 was unavailable, shut down or inoperable for any reason
Novation Date	the date of termination of the IA or such later date determined in accordance with the IA
Novation Trigger Event (Bridge Loan Facility Agreement)	a Bridge Loan Repayment Event has occurred and (i) Government makes a repayment of any of the principal advanced thereunder or interest accrued thereon; or (ii) repayment of the principal advanced thereunder or interest accrued thereon is rescheduled by the bridge lenders; or (iii) 30 days have elapsed since the Bridge Loan Repayment Event and the bridge lenders have not withdrawn the declaration that the principal advanced under the Bridge Loan Facility Agreement plus interest accrued thereon is immediately due and payable by ElectroGas Ltd in advance of the final maturity date specified in the Bridge Loan Facility Agreement
Open Cycle	a mode of operation where the flue gases from a gas turbine generator are fed directly into the atmosphere
Open Cycle Acceptance Date	in respect of a gas turbine generator, the date determined in accordance with the relevant clause of the PPA
Open Cycle Acceptance Tests	the tests of the individual gas turbine generators to be completed by ElectroGas Ltd in accordance with the relevant schedule of the PPA
Open Cycle Acceptance Tests Energy Availability	the demonstrated energy availability of a gas turbine generator as demonstrated by the Open Cycle Performance Acceptance Tests in accordance with the relevant clauses and the procedures set out in the relevant schedule of the PPA, and adjusted to extended reference conditions
Open Cycle Energy Delivery Date	the date on which at least one gas turbine generator has achieved its open cycle acceptance date
Open Cycle Energy Delivery Period	the period from the open cycle energy delivery date to the earlier of (1) the termination date and (2) the energy delivery date
Open Cycle Functional Tests	as a part of the open cycle functional tests, start-up tests shall be carried out after the completion of the erection of components and systems. Functional testing for the open cycle acceptance tests shall cover anything which is ancillary and essential to achieve the open cycle acceptance date. In addition, the open cycle functional tests shall assess the correct operation of all mechanical and electrical protective systems and the redundant system changeover shall be verified

Open Cycle Performance Acceptance Tests	Open Cycle Performance Acceptance Tests will be conducted to verify the performance of each gas turbine generator against the operating parameters as set out in the relevant schedule of the PPA. The Open Cycle Acceptance Tests Procedures shall cover the testing to be undertaken and the methods to be employed. The Open Cycle Acceptance Tests Procedures shall also detail areas of responsibility and the items which specifically require preparation before the tests can be carried out. Open Cycle Performance Acceptance Tests shall be carried out according to ISO 2314 1989 or EN or ASME equivalent for gas turbine driven generator sets. Tests in relation to Open Cycle Acceptance Tests Energy Availability shall be conducted. During this test, the gas turbine generator shall be operated and tested together with all auxiliary plant, equipment and services required for its safe and efficient operation at full capacity for a continuous period of 2 hours. For the purpose of the test, the Metered Energy Availability shall be the average output in MW of the gas turbine generator calculated by dividing (i) the total net electrical output of the gas turbine generator delivered to and measured at the network connection point during the 2-hour test period by (ii) 2 hours. The Open Cycle Acceptance Tests Energy Availability shall be the Metered Energy Availability, measured as above and adjusted to extended reference conditions, provided that the Open Cycle Acceptance Tests Energy Availability may not exceed the Tendered Open Cycle Energy Availability. Should a gas turbine generator or any portion thereof fail under the tests to demonstrate the performance required by the PPA for the Open Cycle Acceptance Tests, ElectroGas Ltd shall perform such further tests which may be required to demonstrate compliance with the Open Cycle Acceptance Tests
Open Cycle Performance Liquidated Damages	if the Gas Turbine Generator Average Availability for a gas turbine generator for the Open Cycle Energy Delivery Period falls below the Acceptable Open Cycle Average Availability, then ElectroGas Ltd shall pay liquidated damages ('Open Cycle Performance LDs') at the rate of €92 for each percentage point shortfall in the Gas Turbine Generator Average Availability for such gas turbine generator for each day during the Open Cycle Energy Delivery Period, up to a maximum of €1,830 per day
Operating and Maintenance Agreement	the Agreement(s) between ElectroGas Ltd and the O&M Contractor(s) for the operation and maintenance of the facilities, as may be amended or supplemented from time to time
Operating Parameters (GSA)	the performance and operating characteristics of the gas facilities as set out in the relevant schedule of the GSA
Operating Parameters (PPA)	the performance and operating characteristics of Delimara 4 as set out in the relevant schedule F of the PPA
Ordinary Share Capital	any issued and outstanding shares of ElectroGas Ltd with voting or other rights of management and control and any outstanding securities of ElectroGas Ltd that are convertible into such shares at the option of the holder
Performance Guarantee	a bank guarantee substantially in the form set out in the relevant schedule of the IA which: - is issued by a bank which (i) holds an approved credit rating and (ii) is registered under applicable law to carry on the business of a bank in a Member State of the EU; and - constitutes an on demand, unconditional and irrevocable commitment to pay by the bank by which it is issued, which is to be provided by ElectroGas Ltd in accordance with the relevant clause of the IA

Performance Guarantee Payments	any amount drawn by Enemalta pursuant to the performance guarantee to be provided by ElectroGas Ltd pursuant to the relevant clause of the IA, to the extent that the performance guarantee is issued using funds drawn under the Bridge Loan Facility Agreement
Performance Liquidated Damages	means open cycle performance liquidated damages, Delimara 4 performance liquidated damages and gas facilities performance liquidated damages
Performance Tests	the Performance Acceptance Tests or the Delimara 4 Performance Assessments which are required to be duly completed periodically in order to demonstrate the Demonstrated Energy Availability of Delimara 4 and the GSA Exit Performance Test
Permanent Financing	limited recourse project financing of all or any material part of the project
Permanent Financing Longstop Date	the date falling one calendar month before the Final Maturity Date
Permitted Change of Control	a. a transfer to an Affiliate of the transferring Transferor, provided that the ultimate holding company of such transferring Transferor continues to hold (directly or indirectly) the same aggregate percentage interest in the Company as such transferring Transferor had held prior to the transfer; or b. a transfer required under any law or by the operation of the law or by order of a court, tribunal or governmental authority or agency having appropriate jurisdiction
Permitted Variable	in a Scheduled Take Period, except for the first Scheduled Take Period, a volume of gas not in excess of +/- 20 per cent of the volume of gas for the previous Scheduled Take Period
Phase 1 Gas Delivery Date	the date falling 2 days after the date upon which Enemalta receives the Gas Facilities Phase 1 Acceptance Tests Report from the independent engineer, if the Gas Facilities Phase 1 Acceptance Tests have been duly completed and the Gas Facilities Phase 1 Acceptance Tests Availability of the gas facilities is equal to or greater than the Phase 1 Original Gas Availability
Phase 1 Original Gas Availability	the gas energy rate required to meet the demand of Delimara 3 Phase 1 running at full load at prevailing conditions on the day of the relevant test, provided that this is not greater than the tendered gas availability
Phase 2 Gas Delivery Date	ff the Gas Facilities Phase 2 Acceptance Tests have been duly completed and the Gas Facilities Phase 2 Acceptance Tests Availability of the gas facilities is equal to or greater than the Phase 2 Original Gas Availability, then the Phase 2 Gas Delivery Date shall be the day falling 2)days after the date upon which Enemalta receives the Gas Facilities Phase 2 Acceptance Tests Report from the independent engineer
Phase 2 Original Gas Availability	the gas energy rate required to meet the demand of Delimara 3 Phase 2 running at full load at prevailing conditions on the day of the relevant test, provided that this is not greater than the tendered gas availability

Plant Manning Agreement	an agreement between Engineering Resources Ltd (a private limited liability company registered in Malta, with company registration number C65835), the O&M contractor and ElectroGas Ltd, whereby Engineering Resources Ltd agrees to provide personnel, having specified skill sets, to the O&M contractor for Delimara 4 for the operation of Delimara 4
Power Purchase Agreement	the Agreement dated 14 April 2015 between ElectroGas Ltd and Enemalta, for the sale of electricity by ElectroGas Ltd to Enemalta from Delimara 4, as may be amended or supplemented from time to time
Project Agreements	the IA, the PPA, the GSA, the Site Services Agreement and the Electricity Connection Agreement
Project Facilities	a. the facilities, including the chartering of the FSU necessary to receive and store liquefied natural gas (together with the associated marine infrastructure, including mooring facilities for floating storage, wharf and jetties) and to re-gasify, compress or decompress as appropriate, condition, regulate, deliver and meter natural gas, and all associated plant, equipment and connection, such facilities being a part of ElectroGas Ltd's combined facilities that simultaneously provide the gas required to be delivered to Delimara 3 in accordance with the terms of the GSA and energy from Delimara 4 in accordance with the terms of the PPA; and b. the 210 MW Delimara 4 electricity generation facility, comprising all associated and auxiliary, including fuel control and other control equipment, through which ElectroGas Ltd shall supply energy and all other facilities and equipment necessary for the safe, efficient and timely operation of the electricity generating facility
Promoter	the entities whose bid for the supply of electricity and gas, in accordance with the PPA and the GSA, has been accepted by Enemalta and who have subsequently acquired the ordinary share capital of ElectroGas Ltd
Reactive Power	has the meaning assigned to it in the Network Code
Reference Conditions	the conditions set out in the relevant schedule of the PPA
Reference GSA Exit Date	the First Reference GSA Exit Date, the Second Reference GSA Exit Date, the Third Reference GSA Exit Date, the Fourth Reference GSA Exit Date, the Fifth Reference GSA Exit Date, the Sixth Reference GSA Exit Date, the Seventh Reference GSA Exit Date, the Eighth Reference GSA Exit Date or the Ninth Reference GSA Exit Date, as the case may be. 'First Reference GSA Exit Date' means the date that is five years after the LNG Supply Term Commencement Date. 'Second Reference GSA Exit Date' means the date that is the LNG Supply Term Expiration Date. 'Third Reference GSA Exit Date' means the date that is 11 years after the Energy Delivery Date, and the 'Fourth Reference GSA Exit Date', 'Fifth Reference GSA Exit Date', 'Sixth Reference GSA Exit Date', 'Seventh Reference GSA Exit Date', 'Eighth Reference GSA Exit Date', and 'Ninth Reference GSA Exit Date' shall be on each subsequent anniversary thereof, respectively (as adjusted in accordance with the relevant clauses of the IA).

Reinstatement Costs	in relation to the facilities being transferred to Enemalta, the cost of rectification of uninsured damage arising prior to the date on which the facilities are transferred plus the cost of outstanding maintenance as at the termination date (or the GSA Exit Date, as the case may be) in relation to the following if being transferred (i) the gas facilities after the Gas Availability Date; (ii) each gas turbine generator after its Open Cycle Energy Delivery Date; and (iii) the facilities after the Energy Delivery Date: - which is in breach by ElectroGas Ltd of the Transaction Agreements, including breach by ElectroGas Ltd of its obligation to comply with the plan agreed in accordance with the relevant clause of the IA; and - which ElectroGas Ltd has failed to carry out to the standard of a reasonable and prudent operator in accordance with the Supply Agreements
Replacement Energy Cost	the marginal cost of procuring replacement electrical energy in Malta (including that available for delivery over any interconnector), in Euro/MWh, starting with the lowest priced electrical energy sources reasonably available and including further sources reasonably available on a merit order basis
Residual Sale Option Fair Value	the Sale Option Fair Value depreciated on a straight line basis between the expiry of the term and the date of expiry of the Site Lease Deed, less reinstatement costs
Revenues	the Energy Availability Payment, the Energy Delivery Payment, the Additional Charges, the Gas Availability Payment and the Gas Delivery Payment, and any other payment which ElectroGas Ltd is entitled to receive in accordance with the Transaction Agreements, but excludes any revenues from any business activity which is not related to the project
Sale Option	ElectroGas Ltd's option to sell the facilities to Enemalta on expiry of the term, exercisable by ElectroGas Ltd in accordance with the IA
Sale Option Equity Value	€35,000,000 prior to the GSA Exit Date, and €27,000,000 on and after the GSA Exit Date
Sale Option Fair Value	the Sale Option Equity Value less Reinstatement Costs
Schedule Start Date	14 April 2015
Scheduled Date	the date upon which a milestone is scheduled to occur or commence (as the same may be amended in accordance with the terms of the Transaction Agreements) as specified in the relevant schedule of the IA
Scheduled Arrival Date	the date on which an LNG ship is scheduled to arrive at the facilities within the Port of Marsaxlokk, as determined by the Loading Certificate
Scheduled Energy Delivery Date	14 April 2017 as at the date of the PPA and defined in the PPA as 24 months from the Schedule Start Date, as such date may be amended from time to time in accordance with the Transaction Agreements
Scheduled Gas Availability Date	18 months from the Schedule Start Date, provided that such date shall not be amended for any reason, including pursuant to the IA
Scheduled Open Cycle Energy Delivery Date	the date being 18 months from the Schedule Start Date, as such date may be amended from time to time in accordance with the Transaction Agreements, that is 14 October 2016 as at the date of the PPA
Scheduled Phase 1 Gas Delivery Date	18 months from the Schedule Start Date, as such date could be amended from time to time in accordance with the Transaction Agreements
Scheduled Phase 2 Gas Delivery Date	24 months from the Schedule Start Date, as such date may be amended from time to time in accordance with the Transaction Agreements

Scheduled Take Failure	a failure of Enemalta to comply with the Scheduled Take Obligation
Scheduled Take Obligation	the obligations of Enemalta in accordance with the relevant clause of the IA
Scheduled Take Period	each period of one whole calendar month during the LNG Supply Term (or in the case of the calendar month in which the LNG supply term begins and ends, the period of such calendar month within the LNG supply term) plus any consecutive additional laytime purchased by Enemalta in respect of such period in accordance with the IA at the daily demurrage rate (provided that any such additional laytime purchased shall run concurrently with the subsequent Scheduled Take Period)
Sea Area	the area of sea hatched in blue on the plan attached as Annex 1 of the Berthing Rights Agreement given to ElectroGas Ltd by the Authority of Transport in Malta
Second Reference GSA Exit Date	the date that is the LNG Supply Term Expiration Date, provided that such date shall not be amended for any reason, including pursuant to the relevant clauses of the IA
Security of Supply Agreement	an agreement to be entered into between ElectroGas Ltd, Enemalta and Government in relation to the security of supply of electricity and gas
Security of Supply Agreement Acknowledgement and Consent	the acknowledgement and consent to be entered into between Enemalta, ElectroGas Ltd and Government on even date herewith, in the form set out in the Security of Supply Agreement
Share Call Option Agreement	the call option agreement in relation to the shares in ElectroGas Ltd entered into by and between the Government Guarantor and the Sponsors
Share Purchase Agreement	the share purchase agreement between Enemalta plc (previously Enemalta Corporation), Gasol plc, GEM Holdings Ltd, Siemens Project Ventures GmbH, Socar Trading SA and ElectroGas Ltd dated 9 May 2014
Share Transfer Agreement	the share transfer agreement dated 27 July 2015 between Government, the Sponsors and BoV in relation to shares in the BoV
Share Transfer Event	the occurrence of any of the events described in the relevant clauses of the Share Call Option Agreement
Share Transfer Formalities	all of the following documents to be delivered by GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA, collectively known as the Transferors, to Government: a. dated resignation letters from all the then current directors, officers and secretary of the Company in the form attached to the Share Transfer Agreement; b. share transfer agreements signed by an authorised representative of each Transferor in the forms set out in the Share Transfer Agreement; c. a notice addressed to the Government of Malta in the form attached to the Share Transfer Agreement; and d. the original register of members of ElectroGas Ltd
Share Transfer Notice	a notice issued by Government in accordance with the relevant clause of the Share Call Option Agreement upon the occurrence of a Share Transfer Event, requiring completion of the transfer of the shares and payment of the purchase price in accordance with the Share Call Option Agreement

Shareholder	a person holding shares in ElectroGas Ltd as at the date of the Pre-Financial Closing Share Transfer Restriction Agreement, being (a) GEM Holdings Ltd, a limited liability company registered and incorporated under the Laws of Malta with company registration number 60349; (b) Siemens Project Ventures GmbH, a limited liability company registered and incorporated under the laws of Germany with company registration number HRB 5812 of the local court (Amtsgericht) of Fürth; and (c) Socar Trading SA, a limited liability company registered and incorporated under the laws of Switzerland with IDE Number CHE-113.990.112
Shares	the total issued share capital in ElectroGas Ltd with voting or other rights of management and control and any outstanding securities of the Company that are convertible into such shares at the option of the holder which, as at the date of the Share Call Option Agreement, consists of 10,000 ordinary shares of one class, of €1 each fully paid up
Site A	the divided portion of land forming part of the Delimara Site measuring approximately 12,000m ² , bounded on the north, north west and on the east by the remainder of the Delimara Site or more accurate boundaries, as shown on the plan attached to the Site Lease Deed
Site B	the divided portion of land forming part of the Delimara Site, measuring approximately 6,700m ² bounded on the west and north west by the remainder of the Delimara Site, and on the south west in part by the remainder of the Delimara Site and in part by the foreshore or more accurate boundaries, as shown on the plan attached to the Site Lease Deed
Site C	the divided portion of land forming part of the Delimara Site, measuring approximately 430m ² bounded on all compass points by the remainder of the Delimara Site or more accurate boundaries, as shown on the plan attached to the Site Lease Deed
Site D	the divided portion of land forming part of the Delimara Site, measuring 145 m ² bounded on all compass points by the remainder of the Delimara Site or more accurate boundaries, as shown on the plan attached to the Site Lease Deed
Site E	the area of reclaimed land where the jetty is to be located, to be marked in plans agreed between the parties in accordance with the relevant clause of the Site Lease Deed
Site Lease Deed	the deed in the records of Notary Dr Marco Burlo' dated 15 December 2014 whereby Enemalta leased the leased premises to ElectroGas Ltd for the location of the facilities, as may be amended from time to time by the parties thereto
Site Lease Deed Agreement	an agreement between ElectroGas Ltd, Enemalta and the Lenders in connection with the Site Lease Deed in a form consistent with the Supply Agreements Direct Agreement
Site Services Agreement	the Site Services Agreement of the same date as the PPA between Enemalta and ElectroGas Ltd for the provision of certain services to ElectroGas Ltd by Enemalta
Site Services Agreement Direct Agreement	an agreement between ElectroGas Ltd, Enemalta and the Lenders, in connection with the Site Services Agreement in a form consistent with the Supply Agreements Direct Agreement
Sponsor	each of (a) SOCAR Trading SA; (b) GEM Holdings Ltd; and (c) Siemens Project Ventures GmbH
Sponsor Supported Amount	at any given time, an amount equal to 105% of 20% of the total commitments under the facility

Standby Letter of Credit	each irrevocable and unconditional standby letter of credit procured by each sponsor in favour of the security trustee in respect of that sponsor's agreed proportion of the sponsor supported amount, issued by: (i) a bank or financial institution with an acceptable credit rating or (ii) any of the original Lenders, and issued in the form set out in the relevant of the Bridge Loan Facility Agreement, or as may otherwise be agreed from time to time between ElectroGas Ltd and BoV (acting on the instructions of the majority lenders)
State Aid	any aid granted by a member state of the EUor through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods within the meaning of Article 107 of the TFEU
State Aid Package	the obligations to be assumed by Government to be set out in a Security of Supply Agreement for which Government is seeking EC approval
State Aid Transfer	the Share Transfer Agreement executed by each of the Transferors (GEM Holdings Ltd, Siemens Project Ventures GmbH and Socar Trading SA) and Government on or about the date of the Share Call Option Agreement and the effectiveness of which is subject to the conditions precedent therein
Step-In Event	following a trigger date, Government settles the outstanding amounts prior to the expiry of the Government cure period and Government has given written notice in accordance with the relevant clause of the LNG SSA
Step-Out Date	the date of an assignment and novation to a successor O&M contractor
STSA LNG SPA	the agreement between ElectroGas Ltd and Socar Trading SA for the supply of LNG to ElectroGas Ltd
Success Fee	the fee payable to each sponsor equal to that sponsor's proportionate shareholding in the borrower, provided such fee shall not exceed in aggregate the sum of €12,500,000 (exclusive of VAT)
Supply	making available the facilities for the supply of electricity and gas by ElectroGas Ltd to Enemalta, including the performance of all ancillary obligations required to be performed in order to satisfy the obligations of ElectroGas Ltd in accordance with the Transaction Agreements
Supply Agreements	the IA, the PPA and the GSA.
Supply Agreements Direct Agreement	an agreement between ElectroGas Ltd, Enemalta and the Lenders as described in the relevant schedule of the IA
Supply Reference Period	in relation to: (1) the Early Gas Period, the early gas period; (2) the Fixed Price LNG Supply Term, a take or pay quarter; (3) the Index Price LNG Supply Term, a take or pay year; and (4) the Conversion Term, as provided in the Conversion Term Agreement
Take or Pay Quarter	the period commencing at 00:00 hours local time in Malta on the LNG Supply Term Commencement Date and ending at 00:00 hours local time in Malta three months later, and each subsequent three-month period commencing at 00:00 hours local time in Malta upon the end of the previous period and ending at 00:00 hours local time in Malta three months later
Take or Pay Year	theperiodcommencingat00:00hourslocaltimeinMaltaontheEarlyGasCommencement Date and ending at 00:00 hours local time in Malta 12 months later, and each subsequent 12 month period commencing at 00:00 hours local time in Malta upon the end of the previous period and ending at 00:00 hours local time in Malta 12 months later

Tariff (PPA)	the tariff payable by Enemalta to ElectroGas Ltd in accordance with the relevant clause and schedule of the PPA, in return for ElectroGas Ltd supplying energy, making energy available and providing ancillary services and starts to Enemalta
Tariff (GSA)	the tariff payable by Enemalta to ElectroGas Ltd in accordance with the relevant clause and schedule of the GSA: - Enemalta shall pay ElectroGas Ltd for each billing period following the Gas Availability Payment Commencement Date (including the Billing Period in which the Gas Availability Payment Commencement Date occurs), the tariff as consideration for making gas available at the Delimara 3 Connection Point and for delivering gas from time to time (Appendix F in this report refers) - Enemalta shall pay the Gas Delivery Payment in respect of any gas taken by Enemalta at the Delimara 3 Connection Point after the Gas Availability Payment Commencement Date - Enemalta shall pay the Gas Delivery Payment in respect of any gas taken by Enemalta at the Delimara 3 Connection Point during the period prior to the Gas Availability Payment Commencement Date, provided that in determining such payment GASPY,M shall be multiplied by 1.1 - the Gas Delivery Payments take into account costs of LNG purchase, delivery storage and re-gasification - gas Availability Payments and Gas Delivery Payments shall be calculated in accordance with the GSA (Appendix F of this report refers) - during any Force Majeure Extended Term, Gas Availability Payments and Gas Delivery Payments shall be calculated in accordance with the relevant schedule of the GSA - all prices exclude VAT and any taxes on sales. Such taxes shall be charged as in addition to the prices set out as required by any applicable law
Tendered Delimara 4 Energy Availability	the total net energy availability of Delimara 4 (expressed in MW at extended reference conditions) which ElectroGas Ltd proposes to make available as at the Energy Delivery Date. The Tendered Delimara 4 Energy Availability is specified in the relevant schedule of the PPA
Tendered Gas Availability	the total gas availability of the gas facilities which ElectroGas Ltd proposes to make available to Enemalta at the Delimara 3 Connection Point as at the Phase 1 Gas Delivery Date, as set out in the relevant schedule of the GSA
Tendered Open Cycle Energy Availability	the total net energy availability of each gas turbine generator (expressed in MW at extended reference conditions) which ElectroGas Ltd proposes to make available as at the Open Cycle Acceptance Date for the relevant gas turbine generator. The Tendered Open Cycle Energy Availability of each gas turbine generator is specified in the relevant schedule of the PPA
Termination Date	the date of the expiry of the term or the date of the termination of the Project Agreements, as the case may be
Termination Notice	a written notice of intention to terminate the IA served by Enemalta or ElectroGas Ltd in accordance with the relevant clause of the IA
Total Commitments	the aggregate of the commitments (being €450,000,000 at the date of the Bridge Loan Facility Agreement, that is, 28 July 2015), whereby the four original lenders committed €112,500,000 each

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