

## **Statement of the Supervisory Board of Uniper SE on the Supplementary Motion of Cornwall (Luxembourg) S.à r.l. dated May 4, 2018**

The supervisory board recommends rejecting the resolution proposal on Topic 6 of the agenda. There is no reason for the appointment of a special auditor as proposed by the shareholder Cornwall (Luxembourg) S.à r.l., and a special audit is not in the interest of Uniper SE (“Uniper”) or its shareholders.

The motion implies that the management board of Uniper took measures and caused actions suitable to impede or even frustrate the success of the takeover offer launched on November 7, 2017 by Fortum Deutschland SE, a subsidiary of Finnish utility company Fortum Oyj (“Fortum”) to acquire all registered shares without nominal value of Uniper (“Fortum Offer”). From the supervisory board’s point of view there is no indication that this was the case.

### **The joint substantiated statement on the Fortum Offer**

In dealing with the Fortum Offer, the management board (and also the supervisory board) focused on a diligent review of the Fortum Offer in preparing the joint substantiated statement of the management board and the supervisory board pursuant to Sec. 27 WpÜG which was issued on November 21, 2017 (“Uniper Statement”). Supported by its financial and legal advisors, the management board made an assessment of the offer price, the economic background of the Fortum Offer, strategic and synergy potential for Uniper and Fortum and, against this background, also the financial consequences of the Fortum Offer for Uniper and its shareholders (dividend policy) as well as the consequences for the employees. Based on this assessment, the management board and the supervisory board concluded that – as laid out and explained in the Uniper Statement – a takeover of Uniper by Fortum in the form envisaged by the Fortum Offer is not in the interest of Uniper and its shareholders.

The position of the management board and the supervisory board on the Fortum Offer was subsequently further explained and conveyed by the management board in interviews and advertisements in the media and investor discussions. The public relations activities of Uniper in this context were focused on Germany and Finland. In Finland, the management board primarily sought to react to statements in an extensive online advertising campaign launched by Fortum after the announcement of the Fortum Offer, *inter alia* with sponsored tweets on Twitter and advertisements on LinkedIn, which were in the view of the management board one-sided. The media campaign in Russia, which aimed at a deliberately negative portrait of Fortum, was according to assertive confirmation of the management board *inter alia* vis-à-vis the supervisory board neither initiated nor supported by Uniper.

### **Implications on Unipro**

For the evaluation of the Fortum Offer, also the potential positive and negative implications of a takeover of Uniper by Fortum on Uniper’s subsidiaries were of major importance. In this respect, the main focus was on Unipro PJSC (“Unipro”), a Russian listed (indirect) subsidiary of Uniper. Uniper indirectly holds 83.73% in Unipro’s capital. During the last five years, Unipro’s average contribution to the consolidated EBITDA of the Uniper group was approx. 24%, the average EBIT contribution was approx. 34% and approx. 1.3 billion Euro of dividends were distributed from Unipro to Uniper.

In Russia, Unipro is active in the area of energy and heat generation. This activity also includes certain water-related activities linked to the operation of the power plants Surgutskaya, Shaturskaya, Smolenskaya, Yaivinskaya and Berezovskaya. Overall, these activities relate to water treatment, transport and supply of warm and/or cold water (including drinking water) and (only at the Berezovskaya power plant) in addition water disposal. Unipro's water activities comprise approx. 270 direct full-time equivalents, generated in 2017 approx. 16.7 million Euro and the supply of cold water amounted to approx. one billion cubic meters. The water-related activities at the power plant Surgutskaya are of particular importance as Unipro has with respect to such activities been appointed as "guaranteed supplier". As such, Unipro is obliged to supply not only entities but also private consumers with water which is why there is a direct connection to the centralized supply systems. At all plants, which are also subject to the supervision by the authorities, the water-related activities include the ongoing analysis of drinking water. This analysis requires in the context of identifying possible pathogens the use of activators ("activators"). The use of activators of pathogens requires a government license which was issued to Unipro in 2016.

### **Requirement of approval of the takeover under the Russian Act on Strategic Investments**

In the context of the assessment of the Fortum Offer, Uniper's management board became aware that a takeover of Uniper (and thus indirectly of Unipro) would possibly require an approval under the Russian Foreign Investment Act or alternatively due to the water activities of Unipro under the Russian Act on Strategic Investments. The applicability of the Russian Act on Strategic Investments could result from the fact that the water-related activities, which constitute a so called natural monopoly, and the use of activators for pathogens are strategic activities of Unipro making Unipro a strategic company within the meaning of the Russian Act on Strategic Investments. The management board of Uniper was in this context advised about the potential consequences of a violation of the requirement to obtain approval under the Russian Act on Strategic Investments. Generally, such a violation results in the invalidity of the transaction. However, the invalidity under Russian law would not invalidate the completion of a transaction in Germany and governed by German law. In order to enforce the invalidity at least in Russia, the competent Federal Antimonopoly Service of Russia ("FAS") could in such a case obtain relatively quickly a court judgement effectively depriving Uniper in Russia of its voting rights connected to the Unipro shares held by it. This could result in the deconsolidation of Unipro in the consolidated financial statements of the Uniper group causing a significant worsening of the consolidated financial figures with negative effects on the rating of Uniper and thus on the global energy trading business of Uniper. Furthermore, dividends paid by Uniper to its shareholders could in the future be reduced. It would also have to be expected that as a result of a deconsolidation Unipro would reduce its profit distributions in order to strengthen its own reserves.

#### *Correspondence with the FAS*

In order to protect the interests of Uniper and its shareholders, the management board decided to get in touch with the FAS with respect to the question whether the Russian Act on Strategic Investments would be applicable. This resulted in a correspondence between Uniper and FAS with letters of October 6 and November 7, 2017 and of January 25, February 14 and April 16 and 18, 2018 as well as a meeting on February 6, 2018.

In the letter of October 6, 2017 Uniper informed the FAS that Fortum, a non-Russian company controlled by a foreign state, through the takeover offer formally announced on

September 26, 2017 would gain control over Uniper and consequently over Unipro. Moreover, it was stated that Unipro could be qualified as a business entity that is strategically important for the Russian national defense and state security, with the consequence that according to the Russian Act on Strategic Investments the acquisition of control over Unipro by a company controlled by a foreign state was prohibited.

In its response of November 7, 2017 to Uniper, the FAS confirmed that any transactions causing a foreign government to acquire indirect control over a strategic entity are prohibited under the Russian Act on Strategic Investments. Moreover, the FAS stated that the acquisition of control over Uniper by Fortum would be prohibited if Unipro or any of its affiliates were strategic entities in the meaning of the Russian Act on Strategic Investments.

The concern of the management board of Uniper underlying this correspondence, that the takeover of Uniper by Fortum could lead to a violation of the Russian Act on Strategic Investments – with the just described significant detrimental consequences for Uniper and Unipro –, was then cleared by respective conditions in the Fortum Offer (Section 12.1(d) and (e)) and the initiation of a respective approval procedure according to the Russian Act on Strategic Investments (mandatory announcement by Fortum of December 21, 2017).

The further correspondence with the FAS focused on aspects of the legal assessment of controlling shareholdings. On January 25, 2018, Uniper sent a letter to the FAS explaining in detail why Unipro, in Uniper's view, was to be qualified as a strategic company. Moreover, it was specified that Fortum is an entity controlled by the Finnish state. Further, it was explained in detail that Fortum would already acquire control over Uniper and indirect control over Unipro through the acquisition of the E.ON package as well shares tendered into the offer until then in the overall amount of 46.93% of the share capital and of the voting rights of Uniper.

On February 6, 2018, a meeting took place between representatives of Unipro and the FAS as well as external counsel of Unipro and of Uniper to further discuss the topic of control. Another letter of Uniper to the FAS on February 14, 2018 followed this meeting. This letter concerned, with reference to the acceptance rate of 47.12% achieved by Fortum which had been announced in the meantime, and with reference to the letter of January 25, 2018, the question whether – in case of a closing of the Fortum Offer – Fortum as a company controlled by a foreign state would acquire control over Uniper and Unipro and would therefore breach the Russian Act on Strategic Investments. Moreover, the letter stated that, (based on an interpretation of the Russian Act on Strategic Investments) for the assessment of the acquisition of control, shares in Uniper held by other state controlled investors and so called offshore companies registered in jurisdictions determined by the Russian Ministry of Finance, such as the Cayman Islands or Monaco, were to be aggregated pursuant to the Russian Act on Strategic Investments with the shareholding of 47.12% to be acquired by Fortum. On this basis, so called sovereign and offshore shareholders would after closing of the Fortum Offer in aggregate hold more than 50% in Uniper.

In response to an information request by the FAS, Uniper finally submitted by letters of April 16 and 18, 2018 additional information on Uniper's shareholder structure, notably with respect to other state controlled investors (such as sovereign funds) and offshore entities.

In the motion for a special audit (Topic 6 of the agenda) and its reasons it is indicated that the qualification of Unipro as strategic company and consequently the applicability of the Russian Act on Strategic Investments were only caused by the management board of Uniper

as a reaction to the Fortum Offer. However, it follows from the entire described correspondence with the FAS reviewed by the supervisory board that the qualification of Unipro as strategic company existed from the outset and was at no point in time questioned by the FAS. Due to its water activities (qualification as natural monopoly and licensing of use of activators required in this context) Unipro always was a strategic company in the meaning of this Act. Consequently, there was a priori no room for the management board of Uniper to arrange for or cause this qualification.

#### *Registration as natural monopoly*

The registration of Unipro's water activities at the location of the power station Surgutskaya as natural monopoly on January 30, 2018, which is referenced in the motion for a special audit and its reasons, had been applied for by Unipro at the end of November 2017 following the end of a dispute with the Russian authorities concerning the qualification as guaranteed supplier. This dispute had started already in 2015 and ended in August 2017 with a final decision of the FAS. Thereafter, according to information provided by Unipro to the external counsel of the supervisory board, Unipro sought to bring about a status fully in compliance with the regulations and to catch up on the outstanding registration as natural monopoly. The registration of natural monopolies serves publicity as well as the protection of the business community and transparency, in particular also in regard of applicable special regulations for the operation of natural monopolies. For example, price regulation by authorities may apply for natural monopolies and a duty to supply; in addition, certain transactions (acquisitions and divestitures) may be subject to approval by the FAS. Further, it was stated that this decision was considered in the first place as an administrative matter and consequently was taken below the level of the Board of Directors of Unipro. The finalization of the application required some effort, and the application was consequently filed only at the end of November 2017. This had been from the point of view of Unipro a purely administratively caused matter which did not require coordination with Uniper.

With respect to the question whether Uniper could approve this conduct by Unipro in view of the Fortum Offer or would have had to act against it, it is furthermore to be stated that the management board of Uniper from a legal point of view did not have the means to cause or to prevent the registration which fell into the responsibility of Unipro. Besides, it is generally also in Uniper's interest that group companies in the framework of their activities comply with the regulatory requirements applicable for their business operations.

Finally, it was of significant importance from the perspective of the supervisory board that the FAS takes its decision on clearance under the Russian Act on Strategic Investments independently and based on its own legal assessment in its own responsibility (and will actually do so); also in this respect, there is no room for influencing by the management board of Uniper or other external third parties.

#### **No other indications**

Also, other conceivable actions and measures of the management board which could have led and lead to an impediment of the Fortum Offer are not perceivable for the supervisory board. In respect of this statement it also needs to be considered that the supervisory board as plenum and also the special committee appointed by it for the Fortum Offer dealt with the question of a potential impediment not only now due to Topic 6 of the agenda but since the public announcement of the Fortum Offer in total in eight meetings of the supervisory board and ten meetings of the special committee.

## **Concluding assessment**

Against the background of the effected review of the facts in connection with the Fortum Offer and the actions of the management board taken in the course of the Fortum Offer as well as their legal assessment there are in sum no indications for violations of duties of the management board; such violations are also not demonstrated in the motion for the appointment of a special auditor and its reasons. From the point of view of the supervisory board, the management board acted based on sufficient information, observed all legal and statutory requirements and acted with the prudence of an orderly and diligent manager exclusively in the interest of Uniper and its shareholders. In particular, the management board has not violated the prohibition of frustrating action in the meaning of Sec. 33 *WpÜG*. The management board made appropriately use of its right to external communication which is not restricted by the *WpÜG* and was and is supported in this context by experienced advisors. It is also not to be expected that the execution of a special audit would reveal new facts. A new legal assessment would not occur in the framework of a special audit anyway. Work and costs for the requested special audit are consequently neither necessary nor appropriate.

The motion for addition was announced in the electronic Federal Gazette on May 11, 2018.

Düsseldorf, May 29, 2018

Uniper SE

The Supervisory Board

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