



Bor. Hor. 041/2011
23 September, 2011

**To: President
The Stock Exchange of Thailand**

**Re: Award in the arbitration matter between Thai Bitumen Company Limited
("TBC") and Glencore Singapore Private Limited ("Glencore")**

On the late evening local time of 21 September 2011, the Award in the arbitration matter between Tipco Asphalt Public Company Limited's ("the Company") wholly-owned subsidiary, Thai Bitumen Company Limited ("TBC") and Glencore Singapore Private Limited ("Glencore") was published in London to the parties.

TBC's Claim

This arbitration arises out of a contract dated 14 October 2008 between TBC and Glencore for the sale and purchase of a cargo of 600,000 bbls (+/-5% at seller's option) of Boscan crude oil CFR Kemaman Terengganu, Malaysia, with a loading window of 20 – 30 November 2008 (subsequently amended to 1 – 3 December 2008) at a price to be calculated on the basis of the WTI (Western Texas Index) NYMEX January 2009 settlement price minus a certain discount per US barrel ("the Sale Contract").

The contractual cargo was never delivered by Glencore before the Sale Contract was terminated by TBC on 26 January 2009. In this arbitration TBC claims damages for an alleged repudiatory breach, further or alternatively for misrepresentation, in the sum of approximately US\$ 20 million.

Glencore denies the alleged breach, relying on the *force majeure* clause, on the grounds that the delivery of the cargo was prevented by causes beyond its reasonable control. Glencore also denies any misrepresentation, as well as TBC's damages claim.

The Arbitration

On 11 February 2009, TBC referred the dispute to arbitration in London pursuant to the arbitration clause in the Sale Contract. An oral hearing took place in London at the International Dispute Resolution Centre between 16 and 27 May 2011.



TIPCO ASPHALT PUBLIC COMPANY LIMITED



The Award

The Tribunal awarded and declared that Glencore's purported notice of *force majeure* was invalid and ineffective and that Glencore was accordingly in breach of the Sale Contract by failing to deliver the contractual cargo within the agreed loading window and remained in continuing breach until the Sale Contract was terminated by TBC on 26 January 2009. TBC's claim for damages for breach of contract succeeds in the net sum of US\$ 20,224,164.10 together with interest thereon at the LIBOR three-month dollar rate prevailing from time-to-time from 4 March 2009 until payment, with an uplift of 2.5% compounded with three-monthly rests. All issues of costs shall be reserved for further submissions and award if necessary.

Please disseminate the above information to members and interested parties accordingly.

Sincerely yours,

Chaiwat Srivalwat
Managing Director

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