

**Invitation to participate in the competitive sale process involving certain assets and rights owned by Martinsa Fadesa, S.A. en liquidación, the terms and conditions for participation and governing body**

Mr. Antonio Moreno Rodríguez and Mr. Angel Martin Torres, appointed by La Coruña's number 1 Commercial Court as Insolvency Administrators of "MARTINSA FADESA, S.A." (hereinafter the "Insolvency Administrators") by means of the present document state the following issues:

**1. PREAMBLE:**

By resolution dated March the 6<sup>th</sup> 2015, La Coruña's number 1 Commercial Court decreed the opening of the liquidation phase at the insolvency proceeding of MARTINSA FADESA, S.A. (hereinafter, "MARTINSA FADESA" or the "insolvent").

As part of the actions to be followed in the context of the aforementioned liquidation proceeding, the Insolvency Administrators filed a liquidation plan that was judicially approved by Court Resolution dated September the 29<sup>th</sup> 2015.

Within the group of assets included in the inventory of the insolvent company there is a group of assets consisting on the shares of several subsidiaries owned by MARTINSA FADESA.

Such subsidiaries are categorized as encumbered by a upstream guaranty granted in favor of syndicated creditors by means of the Senior Financing Agreement signed by MARTINSA FADESA dated 2007 (hereinafter, the "Syndicated Creditors"), and the proceeds of its sale shall be apply to the payment of the ordinary claims, as foreseen in the Spanish Insolvency Act.

As a result of the operations established in the liquidation plan, the Insolvency Administrators are looking for third parties willing to purchase the assets that will be described below.

Accordingly, the Insolvency Administrators are pleased to invite the tenderer (hereinafter the Potential Bidder) to participate in the competitive sale process involving certain assets and rights owned by MARTINSA FADESA, to be conducted under the procedure described below. It shall be noted that:

1. The receipt of this invitation does not grant the Potential Bidder any kind of pre-emptive right with respect to the assets below described.
2. The Insolvency Administrators shall have no obligation or liability against the Potential Bidder other than those specified in the present document.

## **2. GENERAL DESCRIPTION OF THE PROCESS; OBJET OF THE TRANSMISSION**

As previously mentioned, within the group of assets included in the inventory of the insolvent company there is a group consisting on the shares of several subsidiaries owned by MARTINSA FADESA.

Among other subsidiaries, and for the present purposes is Fadesa Hungaria, Zrt. a company registered in Hungary whose entire registered capital belongs to MARTINSA FADESA.

Therefore the object of the transmission concerns the sale of all the shares (hereinafter referred to as Shares or the Assets) issued by FADESA Hungaria Zrt. (Reg. no.: 01-1004518, seat: H-1061 Budapest, Paulay Ede utca 3, 1st floor) and currently held by MARTINSA FADESA.

Fadesa Hungaria Zrt. granted and accession agreement to MARTINSA FADESA 's Senior Financial Agreement dated November 13 2007 by means of which said company became additional debtor and guarantor of such contract. As a result, said shares correspond to the group of assets destined to the payment of ordinary claims.

With regards to this particular circumstance, the aforementioned Liquidation Plan establishes, for the realization of the shares of national and international subsidiaries encumbered by the upstream guaranty granted in favor of the Senior Financing Agreement, among other operations, the possibility of selling the same with the previous resignation of the creditors under the rules of the Syndicated Creditors of to enforce such upstream guaranty.

The only asset directly held by Fadesa Hungaria, Zrt. that will be transferred as a consequence of this proceeding is comprised of the plots of land identified in Annex I.

For the purposes of the present proceeding the last calculated NAV of Fadesa Hungaria, Zrt. (estimated at € 39.044.559, 6) is considered as the minimum reference price (hereinafter the "Minimum Reference Price"). Said NAV was calculated in March 2018 and is based on 2017 Fadesa Hungaria Zrt. annual accounts as well as an independent expert valuation of Csepel plots dated May 2017. The said valuation is just provided as a reference but cannot be understand in any way as a guaranty of value, and therefore the bidder or buyer should assume entirely the value that will grant to the assets or the company, and the seller could not be receivable in any circumstance as liable for such value.

The Terms and Conditions for the selection of the offers are based on the provisions of the Insolvency Act and the most recent case law of the Spanish Courts. As such, these Terms and Conditions stipulate an offer selection process that is (i) fast, (ii) competitive and transparent, and (iii) aimed at maximising the final purchase price to the benefit of the estate of the company under insolvency proceeding.

### **3. CONTENT OF PROPOSALS**

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The Proposal may be prepared as a Share Deal. This may include all the shares (issued by FADESA Hungaria Zrt. (Reg. no.: 01-1004518, seat: H-1061 Budapest, Paulay Ede utca 3, 1st floor) and currently held by MARTINSA FADESA (the Shares or the Assets).

The Proposal must contain:

1. The identity of the Potential Bidder, and of a person with sufficient authority to submit the Proposal, including contact details and an email address.
2. The initial transaction price, considering the Minimum Reference Price.

### **4. PRE-SELECTION OF CANDIDATES AND SUBMISSION OF LOI –CONTENTS & CRITERIA**

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- 4.1. Proposals addressed by the Potential Bidders as Letter of Intent (hereinafter, “LOI”) must be written in English or Spanish and must be received to tenderhungaria@martinsafadesaliquidacion.com by 10.00 am hours CET on February the 12<sup>th</sup>.
- 4.2. LOI must contain in order to be accepted, a clear and irrevocable declaration by the Potential Bidder of its intention to purchase, subject to both the terms and conditions set forth in this document and the terms of the correspondent Binding Offer, and an express and irrevocable commitment, should it be successful in its offer, to pay the Final Offered Price in cash, assuming 100% of Fadesa Hungaria, Zrt. Shares, assets ( and liabilities, comprising obligation to pay all debts without prejudice of possible arrangements with creditors as detail in the information contained in Annex I).
- 4.3. When selecting the successful LOI, the Insolvency Administrators, the following criteria will be taken into consideration:
  - a. Purchase Price offered and other eventual benefits for the insolvency proceeding.
  - b. Payment method and terms/schedule of the closing.
  - c. Acquisition of the shares “*as is where is*”, which implies that no reps & warranties could be included in the future SPA affecting the Final Offered Price, that shall be considered as Purchase Price (as below defined).

d. Pledge of submitting evidence of financial capacity and immediate availability of funds to pay the Final Offered Price as well as capacity to grant an irrevocable first demand guaranty of the 5% of the offered price issued by a first line financial entity with EU banking passport or similar.

## **5. SELECTION OF OFFERS AND SUBMISSION OF BINDING OFFERS**

5.1. The LOI received will be analysed on February the 12<sup>th</sup> by the Insolvency Administrators. The Insolvency Administrators will evaluate the non-binding offers included in such documents (hereinafter the “Non-binding offers”), in accordance with the above-mentioned criteria, ordering them from best to worst according to its Offered Price. The Insolvency Administrators are entitled to take into consideration for the purposes of the subsequent phases of the proceeding those submitted LOI including a purchase price below the Minimum Reference Price.

5.2. From 17 pm CET on the same February the 12<sup>th</sup>, the Insolvency Administrators will send an email up to the 3 bidders that submitted the LOI with higher prices (hereinafter, the “Selected Bidders”), informing them about the best Non-binding offer and granting a week period (until February the 19<sup>th</sup>) to present a Binding-offer.

5.3. The Binding-Offers shall enclosed the following data and documents:

- A proof of funds issued by a first line financial entity that is authorized by the correspondent banking European passport.
- A pledge of submitting, within the term established in Clause 6.2. (i), an irrevocable first demand guaranty of the 5% of the offered price included in the Binding Offer (hereinafter the “Final Offered Price”) issued by a first line financial entity with EU banking passport or similar (hereinafter “the Guaranty”).

5.4. Binding-Offers will be send by email to tenderhungaria@martinsafadesaliquidacion.com and will be accepted until 12 am CET on 19th February 2019.

## **6. SELECTION OF OFFERS. AWARDING**

6.1. The Binding-offers received will be reviewed on February the 20<sup>th</sup> by the Insolvency Administrators.

6.2. From 17 pm on February the 20<sup>th</sup> the Insolvency Administrators will send the following communications:

- (i) Communication to the Preferred Bidder: Email to the best Selected Bidder confirming that, as a result of the analysis of the criteria before referred, has been selected as the preferred bidder (the "Preferred Bidder") as well as granting a 5 calendar days in order to provide the Guaranty to the Insolvency Administrators. The communication to the Preferred Bidder will also indicate the term of 30 days in order to develop the correspondent Due Diligence and discuss the terms of the closing of the SPA.
- (ii) Communication to the Selected Bidders: Email to all of the rest of Selected Bidders informing them of the bid that has been chosen as a result of the analysis of the criteria before referred (hereinafter, the "Preferred Bid").
- (iii) Communication to the Syndicated Creditors: At this same date, the identity of Preferred Bidder and the terms of the Preferred Bid will be notified to the Syndicated Creditors in order to manage, if needed, the waiver of the upstream guaranty.

6.3. At the same date, the list of Binding-Offers arrange in order of amounts, will be published in MARTINSA FADESA web site.

6.4. Depending on cash requirements and in case the closing of the present proceeding is delayed, from the date of the Communication to the Preferred Bidder, the Insolvency Administrators may request that the Preferred Bidder makes an advance on account of the Final Purchase Price to cover potential payments in relation to the Tax Plot which amount to approximately € 410.000 due in March and September.

6.5. Should the Preferred Bidder fail to comply in form and in time with the deadlines set out in Clause 6.2 (i), for whatever reason, other than those described in Clause 8, the Insolvency Administrators could decide one of the following options (i) request the judicial enforcement of the agreement, (ii) the Preferred Bidder must pay a penalty in lieu of an indemnity for damages equivalent to the amounts advanced as per the Guaranty. Should the Preferred Bidder fail to comply in form and time with the deadline concerning the Guaranty, the Preferred Offer shall be deem void without being entitled to claim any damages and or cost arisen from the present proceeding. In addition, should any/either of the breach before referred occur, and if the Insolvency Administrators decides so, the tender would be awarded to the second-placed Selected Offeror in the list published by the Insolvency Administrators at MARTINSA FADESA web site.

6.6. The Preferred Bidder will be liable for all of the expenses and taxes arising from the transfer.

## **7. ACCESS TO INFORMATION AND DUE DILIGENCE**

This invitation entitles the Potential Bidder that is declared as Preferred Bidder, to access the available documentation and information in order to perform a Due Diligence, subject to the prior acceptance of

the Confidentiality Agreement that shall be provided with the communication of the award of the condition of Preferred Bidder.

Access to the information shall be provided solely through electronic means. Such access shall be granted as of the day on which the Insolvency Administration receives the Confidentiality Agreement duly signed by the Company.

The information and documentation to be provided to candidates shall include financial, legal, labour, tax and human resources documents.

Furthermore, the Preferred Bidder shall be allowed to make a technical visit to Fadesa Hungaria, Zrt.'s plots provided that management of Fadesa Hungaria, Zrt. and the Insolvency Administrators have been notified in advance, and that these latter two parties have authorised such a visit for the dates and times arranged.

In any case, the period allowed for reviewing all the information and documentation made available to the candidates shall expire on March the 19th. The information delivery stage shall be closed after this date.

## **8. CLOSING**

The Preferred Bidder and the Insolvency Administrators will be summoned to appear at the Public Notary rather in Madrid rather in Budapest, in March the 20th. This date could be delayed by the Insolvency Administrators, if circumstances arisen after the selection of the bidder appears, duly justified at seller convenience.

The Preferred Bidder shall only be entitled to unilaterally terminate the negotiations of the SPA if as a result of the Due Diligence or otherwise it will be proven that the any of the following conditions precedent ("Conditions Precedent") concerning Fadesa Hungaria, Zrt. and or MARTINSA FADESA are not correct, either entirely or partially:

- i. MARTINSA FADESA is a lawfully existing and operating Spanish company under liquidation, being able to make the SPA without any further condition, based on prior approval of the majorities of the creditors under the Accession Agreement granted 17 June 2008.
- ii. Fadesa Hungaria, Zrt. is a lawfully existing and operating Hungarian company.
- iii. The exclusive owner of the Shares is MARTINSA FADESA, the Shares are freely transferable and are without any encumbrances, whether private or public, whether under Hungarian, Spanish or any other law. The Shares do not constitute guarantee, security or collateral – either contractual

or statutory – for the benefit of any third party. The Shares are not the subject of formal offers or preliminary agreements of alienation in favour of and/or from third parties.

- iv. Fadesa Hungaria, Zrt. is the exclusive owner of the Hungarian properties listed in Annex I (the “Properties”).
- v. There are no further encumbrances on the Properties over and above those explicitly mentioned in such Annex I.
- vi. By the day of the Closing Fadesa Hungaria, Zrt. shall have any debts, liabilities, duties etc. towards any Fadesa company (the term Fadesa company means any physical or legal person – either fully or partially, directly or indirectly – controlled by or controlling MARTINSA FADESA and/or its shareholders and/or its managers).
- vii. Fadesa Hungaria, Zrt. has no employees and hasn’t any debts, liabilities, duties etc. towards any former employee.

In case the Conditions Precedent are not fully correct, the Preferred Bidder shall be entitled only to terminate this Agreement according to this clause as well as the reimbursement of the Guaranty, but shall not be entitled to ask for a price reduction, although such reduction could offered to the Preferred Bidder by the Insolvency Administrators.

## **9. INTERPRETATION OF AND ADDITIONS TO THE CONDITIONS**

The Insolvency Administrator are entitled, in the broadest terms, to interpret and where necessary make additions to the conditions of the tender, at their discretion. Any such decisions must be published on MARTINSA FADESA web site. In particular the Insolvency Administration could modify the terms and deadlines of the proceeding.

Moreover the Insolvency Administrators are entitled freely to withdraw at any moment the Assets from the sale proceeding, should any external circumstances appeared, without compensation right for any third Bidder, whatever would be the degree of advance of this process of vending.

For clarification purposes, this selling process is made to select the best offer, but the perfection of the SPA shall only occur with the awarding of the Binding Offer, and therefore, none bidder will be entitled to ask for any purchase right until the final decision of the Insolvency Administrators.

**Appendix 1**

Registration No.	Classification	Extension (m2)	Encumbrances
Budapest, Urban, 209975	a) house, yard, workshop	295 107	1) right of cable for 50 m2, ELMU 2) right of cable for 40 m2, ELMU 3) right of water access, 1925 m2, Municipality of Budapest
	b) forest	26 484	
Budapest, Urban, 209978	a) non-built-up area	213 713	1) right of water access, 1300 m2, Municipality of Budapest
	b) forest	10 315	
Budapest, Urban, 209988	a) non-built-up area	168 195	1) pre-emption right for the Municipality of Budapest 2) right of water access, 1447 m2, Municipality of Budapest
	b) forest	11 196	
Budapest, Urban, 209990/3	a) non-built-up area	79 482	1) pre-emption right for the Municipality of Budapest 2) right of cable for 53 m2, ELMU 3) right of cable for 191 m2, ELMU 4) right of cable for 186 m2, ELMU 5) right of water access, 348 m2, Municipality of Budapest
	b) forest	1 857	
Budapest, Urban, 209990/5	building, yard	2 016	1) pre-emption right for the Municipality of Budapest.
total	a) non-agricultural area	758 513	
	b) forest	49 852	

\*\* Based on Government Decree nr. 42/2018 administrative authority procedures relating to developments connecting to Kemény Ferenc sport facility development Programme and other South-Pest and North Csepel developments have been declared an outstanding issue from national economic point of view. Based on the above, the Budapest Assembly modified the Structural Development Plan of Budapest (TSZT) on 12<sup>th</sup> December 2018 in a simplified procedure, which modification also affected the above plots.