

Yukos Awards Enforcement Proceedings – The Belgian Aspects (Part 1 – The Background)



On 21, 24, 25 and 28 November 2016, the Brussels Court of First Instance heard the arguments of the parties to the Belgian enforcement proceedings of one of the three arbitral awards which cumulatively ordered Russia, in 2014, to pay USD 50 billion to the benefit of former shareholders of the Russian oil company *Yukos* (**Yukos**).

The origins of this case date back to the dissolution of the Soviet Union when Yukos became Russia's largest and first fully-privatized oil company. In 2003, however, Russia alleged that Yukos had engaged in a series of tax-avoidance schemes whereby huge amounts of capital were being transferred to off-shore holdings located in tax havens. Consequently, it commenced a series of measures aimed at re-appropriating the company's assets which ultimately led to Yukos's nationalisation.

Seeking to recoup their losses suffered as a result of these events, three of Yukos's former shareholders – *Hulley*

Enterprises Ltd, Yukos Universal Ltd (YUL) and Veteran Petroleum Ltd – each started arbitration proceedings alleging that Russia's conduct had violated the Energy Charter Treaty, to which it was a signatory.

In July 2014, the arbitral tribunals (composed of the same arbitrators) and which were seated in the Hague (the Netherlands) rendered three substantially similar awards in which they found that Russia had violated the Energy Charter Treaty. The tribunals consequently awarded the three shareholders a combined USD 50 billion in damages, plus interest, as well as USD 60 million in attorneys' fees and USD 4 million in arbitration costs.

Following the issuance of the awards, the shareholders began recognition and enforcement proceedings in Belgium, France, Germany, India, the U.K. and the U.S.A.

In Belgium, the *exequatur* of the award in YUL's favour was initially granted by the Brussels Court of First Instance on 24 June 2015. In addition, YUL also started to seize assets allegedly belonging to the Russian Federation including real estate and bank accounts. In addition, YUL sought the seizure of assets belonging to two Russian press agencies (*ITAR TASS* and *Ria Novosti*).

Meanwhile, as the shareholders began the enforcement proceedings in key jurisdictions, Russia started proceedings to set aside the awards before the Dutch courts. On 20 April 2016, the District Court of The Hague issued a judgment in which it found that the awards should be set aside as the tribunals lacked jurisdiction given that Russia had never ratified the Energy Charter Treaty and therefore had never agreed to arbitrate the disputes under this treaty.

As a consequence of this judgment and despite an appeal lodged against it, enforcement proceedings launched by the shareholders were brought to a halt in most jurisdictions

except in France and in Belgium.

With regard to the proceedings in Belgium, the hearings that took place last week before the Brussels Court of First instance related to two distinctive issues:

The first issue was heard on 21 and 28 November 2016 and concerned the legality of the seizures conducted by YUL against assets belonging to Russia and two of its affiliated news agencies (*ITAR TASS* and *Ria Novosti*).

The second issue (which was heard before a different judge on 24 and 25 November 2016) related to the *exequatur* of the award rendered by the arbitral tribunal in July 2014. Indeed, although the *exequatur* of the award was initially granted to YUL by the Brussels Court of First Instance on 24 June 2015 (see above), this had been done through a unilateral process which did not allow Russia to make itself heard. Russia, however, filed a third-party opposition against the order which had granted the *exequatur* of the award. This third-party opposition had the effect of bringing the parties back before the judge for a new hearing and debates.

In the following posts, we will report on (i) the inadmissibility objection raised by YUL against the third-party opposition filed by Russia against the order rendered by the Court of First Instance on 24 June 2015 (Part 2); (ii) the merits of the case in which Russia opposes the *exequatur* of the award rendered in July 2014 (Part 3); and the proceedings whereby Russia challenges the legality of the seizures conducted by YUL against assets belonging to Russia (Part 4).

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