Yukos Awards Enforcement Proceedings – The Belgian Aspects (Part 3 – The Merits of the Case)

Without further delay, here's the third article (of four) devoted to the hearing held in Brussels at the end of November on the *exequatur* of the award rendered in *Yukos Universal Ltd* (***YUL***)'s favour. For background information on the *Yukos* (***Yukos***) case, please click here, while for information regarding the inadmissibility objection raised by YUL against Russia's third-party opposition, please click here.

As of today, with the notable exception of France, where a court recently ruled that the French enforcement proceedings could move forward (see here), most of the enforcement proceedings regarding the awards rendered in the Yukos cases have been brought to a halt following the judgment of the District Court of the Hague of 20 April 2016 which annulled those awards.

In Belgium, however, the question regarding the validity of those enforcement proceedings remains open.

As mentioned in my previous posts, the Belgian *exequatur* of the award rendered in YUL's favour had initially been granted by the Brussels Court of First Instance on 24 June 2015. However, this was achieved through a unilateral process which did not allow Russia to take part in the proceedings or make itself heard. Russia therefore filed a third-party opposition against the order of the Court of First Instance which had granted the *exequatur* of the award. This third-party opposition had the effect of bringing the parties back before the Brussels Court of First Instance for a new hearing which was held on 24 and 25 November 2016.

In opposing the *exequatur* of the award, Russia argued (as an initial objection) that – contrary to the notable exceptions of the Belgian and French positions – the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ***New York Convention***) did not allow the proceedings leading to the *exequatur* of an arbitral award to be conducted through a unilateral process (as had been the case in 2015 when YUL first sought the *exequatur* of the award).

More importantly, in addition to the grounds that it had already brought forward in the annulment proceedings against the awards, Russia argued in the present case that the judgment rendered by the District Court of the Hague on 20 April 2016 had to be fully recognised and enforced in Belgium and should therefore bar the exequatur sought by YUL.

YUL, however, opposed this argument by relying on Article VII of the New York Convention which provided that the New York Convention did not "*deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon*". According to YUL, Article VII of the New York Convention therefore allowed a party seeking to recognise and enforce an arbitral award to either opt for an application of the New York Convention or any other system of law which would make

this recognition and enforcement easier.

Applying Article VII of the New York Convention therefore allowed YUL to make an explicit use of the former provisions of the Belgian Code of Civil Procedure which provided that the annulment of foreign arbitral awards by the courts of the seat of arbitration still made it possible to seek the recognition and enforcement of those awards in Belgium. To this end, YUL argued that the Belgian judge had to follow the well-settled case-law of the French Supreme Court in *Hilmarton* and *Putrabali* which stipulates that the annulment of an award at its seat is not a ground for refusal of recognition and enforcement in another state. Furthermore, YUL also relied on Article V of the New York Convention which explicitly provided that the recognition and enforcement of the award *may* (but need not) be refused if the award "*has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made*".

Russia, however, strongly opposed this position. According to the Russian Federation, the new Belgian Arbitration Act of 2013 (which prohibits the *exequatur* of arbitral awards annulled by the courts of their seat) applied to the case at hand.

This position, however, was not shared by YUL who argued instead that the Belgian Arbitration Act of 2013 only applied to arbitral proceedings initiated after the enactment of the new Act. In the case at hand, however, the arbitration proceedings had been initiated by YUL long before 2013 (*i.e.* in 2004-2005). Consequently, only the former Belgian Arbitration Act which – as examined above – was favorable to parties seeking enforcement of arbitral awards even if those awards had been annulled, applied to the case at hand.

The Brussels Court of First Instance is expected to render its judgment on those issues in early 2017. The International Litigation Blog will of course keep you posted of any further

developments. Meanwhile, I will publish in the coming days the fourth and final article on the Belgian aspects of the Yukos case. This post will be devoted to the proceedings whereby Russia challenges the legality of the seizures, conducted by YUL, of assets belonging to the Russian Federation.

Stay posted…
