The End of the Affair?

Hulley Enterprises Ltd (Cyprus) v Russian Federation; Yukos Universal Ltd (Isle of Man) v Russian Federation; Veteran Petroleum Ltd (Cyprus) v Russian Federation, UNCITRAL, PCA Nos AA 226, 227, 228, Final Awards, 18 July 2014 (Yves Fortier, Charles Poncet, Stephen Schwebel)

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Keywords


The claims relating to Russia’s treatment of OAO Neftyanaya Kompaniya Yukos (Yukos) and its officers, in particular its former principal shareholder and Chief Executive Officer, Mikhail Khodorkovsky, have been one of the long-running sagas of international investment law. The particular arbitrations which are the subject of this comment (Yukos arbitrations), brought by three controlling shareholders in Yukos – Hulley Enterprises (Hulley), Yukos Universal (YUL) and Veteran Petroleum (VPL) (collectively, Claimants) – were initiated in February 2005, and appeared to have been brought to a close with the issue of the Final Awards in those three cases on 18 July 2014. In the Final Awards,1 the Tribunal – composed of Yves Fortier (President), Charles Poncet and Stephen Schwebel – held that Russia had breached its obligations under Article 13(1) of the Energy Charter Treaty (ECT) (ie the obligation not to expropriate investments unless certain conditions are met) and ordered Russia to pay Hulley, YUL and VPL compensation in the order of USD 39,971,834,360, USD 1,846,000,687 and USD 8,203,032,751, respectively. The Claimants were thus (collectively) awarded in

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1 The Tribunal issued three separate ‘Final Awards’ that are substantively identical so far as concerns the Tribunal’s description of the facts and its reasoning on the legal issues; only the sections on the quantification of damages in the Final Awards are substantively distinct. For the sake of clarity, this case comment will cite to the relevant paragraphs in: Hulley Enterprises Ltd (Cyprus) v Russian Federation, UNCITRAL, PCA No AA 226, Final Award (18 July 2015).
excess of USD 50 billion in compensatory damages, as well as further amounts in respect of their legal costs and the costs of the arbitration.

These are, on any measure, very significant awards. Indeed, everything about this case is on a mammoth scale: the Final Awards run for 579 pages (plus eighteen annexes) and were issued following the convening of five procedural hearings, a ten day hearing on preliminary objections (which was the subject of three Interim Awards on Jurisdiction and Admissibility) and a twenty-one day hearing on the merits. Along the way, the Tribunal issued 18 Procedural Orders. The arbitral record was immense: as the Tribunal observed in the Final Awards, ‘[t]he written submissions of the Parties span more than 4,000 pages and the transcripts of the hearings more than 2,700 pages. Over 8,800 exhibits have been filed with the Tribunal’ (para. 4). In the merits phase alone, the Parties filed 6,281 exhibits, nine witness statements and nineteen expert reports (paras. 23–40).

The issue of the Final Awards has not, however, been the end of these claims. On 28 January 2015, Russia commenced proceedings in the Hague District Court in which it is seeking to set aside the Final Awards. As at the time of writing, those proceedings before the Netherlands courts were still pending. And the Yukos arbitrations are not the only cases that have been brought against Russia arising out of the Yukos affair. In February 2004, Khodorkovsky lodged a claim with the European Court of Human Rights (ECtHR) in which he argued that Russia had by its conduct violated his rights under Articles 3, 5 and 18 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). In April 2004, Yukos itself launched proceedings before the ECtHR, in which it argued that Russia had breached Article 6 of the ECHR and Article 1 of Protocol 1 to the ECHR. In March 2005 and March 2006, Khodorkovsky and another officer of Yukos, Platon Lebedev,