



**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN
ACCORDANCE WITH**

**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND
THE CABINET OF MINISTERS OF UKRAINE ON THE ENCOURAGEMENT AND MUTUAL
PROTECTION OF INVESTMENTS DATED NOVEMBER 27, 1998 (UKRAINE-RUSSIA BIT)**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, 1976**

PCA CASE NO. 2015-07

- between -

**(1) AEROPORT BELBEK LLC
(2) MR. IGOR VALERIEVICH KOLOMOISKY**

The Claimants

- and -

THE RUSSIAN FEDERATION

The Respondent

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal

Professor Pierre-Marie Dupuy (Presiding Arbitrator)
Sir Daniel Bethlehem QC
Dr. Václav Mikulka

Registry

Permanent Court of Arbitration

October 30, 2015

1. Procedural Background

1.1 On May 20, 2015, the Tribunal issued Rules of Procedure in which the Procedural Timetable in this case was established (paragraph 2.1). The timetable was subject to adjustment by the Tribunal, after affording the Parties an opportunity to be heard, in the event that the Respondent raised any objection to jurisdiction and/or admissibility, or for any other reason concerning the efficient management of the proceedings.

1.2 Paragraph 2.2 of the Rules of Procedure also provided that:

In the event that either Party, without the leave of the Tribunal, fails to file a scheduled pleading [pursuant to the Procedural Timetable], the other Party may apply to the Tribunal for an accelerated timetable. Any such application shall propose specific dates and events in respect of such elements of the remaining timetable as are included in the application. The Tribunal, after affording the other Party an opportunity to be heard, shall rule on the application within 14 days. If the Tribunal accepts the application, it shall prescribe a modified timetable, including such steps as may be necessary and appropriate in the circumstances.

1.3 On July 2, 2015, the PCA received two letters from the Russian Federation dated June 16 and July 1, 2015, respectively (“Russian Correspondence”):

1.3.1 In the June 16, 2015 letter, the Deputy Director of the Department of International Law and Cooperation of the Russian Ministry of Justice of the Russian Federation returned to the PCA a copy of the Claimants’ Notice of Arbitration in this case, as well as the Notice of Arbitration in PCA Case No. 2015-21: PJSC CB Privatbank and Finance Company Finilon LLC v. Russian Federation. Referring to the claims raised therein, he stated:

It is manifest that such claims cannot be considered under [Article 9 of the Ukraine-Russia BIT] and, therefore, the [Ukraine-Russia BIT] cannot serve as a basis for composing an arbitral tribunal to settle those claims.

In accordance with paragraph 1 Article 1 of the [Ukraine-Russia BIT] the term “investment” means every kind of movable and immovable and intellectual property invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party. The property in question which is the matter of the claims is situated in the territory of the Crimea and Sevastopol, i.e. in the territory that was a part of Ukraine but at the present time pursuant to the will of people forms an integral part of the territory of the Russian Federation and cannot be regulated by the [Ukraine-Russia BIT].

On the basis of the abovementioned the Russian Federation does not recognize the jurisdiction of the abovementioned claims.

1.3.2 In the July 1, 2015 letter, the Ambassador of the Russian Federation to the Netherlands, referring to the June 16 letter, advised that:

Nothing in the attached letter of the Ministry of Justice of the Russian Federation can be interpreted as consent of the Russian Federation to constitution of an arbitral tribunal, participation in the arbitration proceedings, or as procedural actions taken in the framework of the proceedings on the claims of Aeroport Belbek LLC and Mr. Igor Valerievich Kolomoisky [...] against the Russian Federation [...].

- 1.4 By letter dated July 6, 2015, the Tribunal stated that it considered the content of the Russian Correspondence to constitute an objection to the jurisdiction of this Tribunal and to the admissibility of the Claimants' claims, and that, as such, Article 21 of the UNCITRAL Arbitration Rules 1976 applied.¹ The Claimants' comments were invited, in particular, on any issues of procedure that could arise as a result of the Russian Federation's objections.
- 1.5 On July 15, 2015, the Claimants submitted, *inter alia*, that in light of the Russian Correspondence, they should be permitted to apply for an accelerated timetable.
- 1.6 After inviting the Russian Federation to respond to the Claimants' submission, and receiving no response, the Tribunal declined the Claimants' request for leave to apply for an accelerated timetable. It maintained the original deadline of September 30, 2015, for the Russian Federation to file a *Statement of Defence and any Objection to Jurisdiction and/or Admissibility (including any application for bifurcation)* ("Statement of Defence").
- 1.7 The Russian Federation did not submit a Statement of Defence by September 30, 2015.
- 1.8 By letter dated October 2, 2015, the Claimants applied for an accelerated timetable (and proposed modifications to the Procedural Timetable) pursuant to paragraph 2.2 of the Rules of Procedure ("Request").
- 1.9 On October 7, 2015, the Tribunal granted the Russian Federation until October 19, 2015, to comment on the Claimants' Request. The Russia Federation did not submit any comments by that date.
- 1.10 The Tribunal issues the present ruling on the Claimants' Request pursuant to paragraph 2.2 of the Rules of Procedure.

¹ Article 21 of the UNCITRAL Arbitration Rules 1976 provides, in relevant part:

(1) The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction [...].
[...]

(4) In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

2. The Tribunal's Ruling

- 2.1 Pursuant to Article 15(1) of the UNCITRAL Arbitration Rules 1976, the Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity of presenting its case.
- 2.2 In accordance with Article 28(1) of the UNCITRAL Arbitration Rules 1976, if, within a period of time fixed by the Tribunal the Respondent fails to communicate a Statement of Defence without showing sufficient cause for such failure, the Tribunal shall order that the proceedings continue. The Tribunal hereby orders that these proceedings continue.
- 2.3 The Tribunal accepts the Claimants' request for an accelerated timetable. The Tribunal does not construe paragraph 2.2 of the Rules of Procedure as requiring it to prescribe the modified timetable contemporaneously with the present decision to accept the Claimants' Request. The Tribunal shall prescribe a modified timetable, including such steps as may be necessary and appropriate in the circumstances, by **November 30, 2015**. For the avoidance of doubt, the Tribunal vacates the current Procedural Timetable (at paragraph 2.1 of the Rules of Procedure), including the hearing dates of November 14-18, 2016.
- 2.4 For the purposes of informing the Tribunal's decision on a modified timetable, the Tribunal requests the views of each Party, to be submitted no later than **18h00 CET on Thursday, November 12, 2015**, on the following:
- 2.4.1 The Tribunal is currently minded to order a modified timetable that would proceed on the basis of a bifurcated proceeding that would address issues of jurisdiction and admissibility in a preliminary procedure. Before taking a decision on this matter, the Tribunal invites the Parties to express their views on whether such an approach would be appropriate;
- 2.4.2 The appropriate length of the hearing, in the event that the Tribunal decides that it should proceed by way of a preliminary procedure on jurisdiction and admissibility;
- 2.4.3 The acceptability of the appointment by the Tribunal of one or more advocates (*amici curiae*) to the Tribunal to address issues in the absence of the participation of the Respondent in the proceedings.

Date: October 30, 2015

Place of Arbitration: The Hague, the Netherlands



On behalf of the Tribunal
Professor Pierre-Marie Dupuy
Presiding Arbitrator