



**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. 3

The Arbitral Tribunal

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

Registry

Permanent Court of Arbitration

November 30, 2015

1. Procedural Background

- 1.1 In Procedural Order No. 2 dated October 30, 2015, the Tribunal:
 - 1.1.1 ordered, pursuant to Article 28(1) of the UNCITRAL Arbitration Rules 1976 (“UNCITRAL Rules”) that these proceedings shall continue notwithstanding Respondent’s failure to communicate a Statement of Defence within the time limit granted;
 - 1.1.2 accepted Claimants’ request for an accelerated timetable;
 - 1.1.3 indicated that it would prescribe a modified timetable by November 30, 2015;
 - 1.1.4 advised the Parties that it was currently minded to proceed on the basis of a bifurcated proceeding that would address issues of jurisdiction and admissibility in a preliminary procedure;
 - 1.1.5 invited the views of the Parties on: (a) whether such an approach would be appropriate; (b) the appropriate length of the hearing in the event of such bifurcation; and, (c) 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 Respondent in the proceedings.
- 1.2 By letter dated November 11, 2015, Claimants submitted their views on the above-mentioned matters.
- 1.3 Respondent has not submitted its views on the above-mentioned matters.

2. The Tribunal’s Ruling

Bifurcation

- 2.1 The Tribunal has afforded the Parties an opportunity to be heard on the question of bifurcating the proceedings so as to address issues of jurisdiction and admissibility in a preliminary procedure. The Tribunal has considered the views of Claimants. It notes that Respondent chose not to submit its views.
- 2.2 Taking into account all of the relevant circumstances of this case, including that the Tribunal considers the Respondent’s correspondence of June 16 and July 1, 2015 to constitute an objection to the jurisdiction of the Tribunal and to the admissibility of Claimants’ claims under Article 21 of the UNCITRAL Rules, the Tribunal shall proceed on the basis of a bifurcated proceeding that will address issues of jurisdiction and admissibility in a preliminary procedure.

Modified accelerated procedural timetable

- 2.3 At this stage, the Tribunal prescribes the following steps of a modified accelerated procedural timetable:

Date	Party/Tribunal	Submission/Event
December 18, 2015	Tribunal	Tribunal issues questions to one and/or both Parties
February 29, 2016	Parties	One and/or both Parties submit responses to the Tribunal's questions
March 14, 2016	Parties	Each Party indicates whether it wishes to comment on the responses provided by the other Party to the Tribunal's questions
April 11, 2016	Parties	Any Party having indicated a wish to comment on the responses provided by the other Party to the Tribunal's questions files its comments

- 2.4 Upon completion of these steps, the Tribunal will prescribe further steps in the modified accelerated procedural timetable.

Confidentiality and transparency

- 2.5 Paragraph 4.2 of Procedural Order No. 1 provides that:

For issues not dealt with in the UNCITRAL Rules, the Tribunal shall apply the rules that the Parties have agreed upon. In the absence of such agreement, the Tribunal shall apply the rules it deems 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 in accordance with Article 15(1) of the UNCITRAL Rules.

- 2.6 The Tribunal notes that, pursuant to Article 25(4) of the UNCITRAL Rules, “[h]earings shall be held *in camera* unless the parties otherwise agree.” Article 32(5) provides that “[t]he award may be made public only with the consent of both parties.”
- 2.7 No other provisions in the UNCITRAL Rules address confidentiality or transparency. The Netherlands Arbitration Act (Code of Civil Procedure, Book IV, 1 December 1986, as amended 1 January 2015) does not contain provisions relating to confidentiality or transparency. The Parties have not agreed on any other rules relating to confidentiality or transparency. Accordingly, while remaining within the confines of the UNCITRAL Rules, the Tribunal shall apply the rules that it deems appropriate in this regard.
- 2.8 The Tribunal has become aware that the fact of these proceedings, including the nature of the claim, as well as the composition of the Tribunal, is in the public domain. The Tribunal in the present case is identically composed in a parallel case (PCA Case No. 2015-21: *PJSC PrivatBank et al v. Russian Federation*) engaging apparently similar preliminary issues. The Tribunal is also aware through information in the public domain that a number of other arbitral tribunals have been constituted in seemingly parallel proceedings commenced by claimant

parties against the Russian Federation under the Ukraine-Russia BIT concerning the Russian Federation's alleged conduct on the Crimean peninsula. From these same sources, it appears that this Tribunal is the first in time to be constituted in such proceedings. Considering that this Tribunal may be addressing procedural, preliminary and possibly substantive issues that may be proximate to and have a bearing on those that may be addressed by these other tribunals, the Tribunal considers that it is in the interests of the public administration of justice that, at the very least, basic information on procedural steps taken by this Tribunal should be made publicly available.

- 2.9 Accordingly, the Tribunal is currently minded to instruct the PCA to:
- 2.9.1 post on the PCA Case Repository (<http://www.pcacases.com>) the information contained in Annex 1 to this Procedural Order;
 - 2.9.2 issue the press release attached at Annex 2 to this Procedural Order; and,
 - 2.9.3 issue further press releases from time to time containing information on the procedural steps taken by this Tribunal, in which case, a copy of each press release would be provided to the Parties in advance of its being made publicly available.
- 2.10 Any comments that the Parties may have on the content of paragraph 2.9 should be submitted to the Tribunal by **December 10, 2015**.

Date: November 30, 2015

Place of Arbitration: The Hague, the Netherlands



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