



**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**

- 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. 8

The Arbitral Tribunal

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

Registry

Permanent Court of Arbitration

21 August 2019

1. Procedural Background

- 1.1 The Claimants commenced these arbitral proceedings on 13 January 2015 by serving a Notice of Arbitration dated 9 January 2015 on the Respondent pursuant to Article 9(2)(c) of 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 27 November 1998 (the “**Treaty**”) and the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted in 1976 (the “**UNCITRAL Rules**”).
- 1.2 The Tribunal was constituted on 14 April 2015.
- 1.3 On 20 May 2015, having sought the views of the Parties, but having received no comments from the Respondent, the Tribunal issued Procedural Order No. 1 and Rules of Procedure, providing that the Permanent Court of Arbitration (the “**PCA**”) would act as registry in these proceedings, fixing The Hague as the place of arbitration, and establishing an initial timetable. Pursuant to the initial timetable, the Claimants were to file a Statement of Claim by 30 June 2015 and the Respondent was to file a Statement of Defence and any Objection to Jurisdiction and/or Admissibility, including any Application for Bifurcation, by 30 September 2015.
- 1.4 On 30 June 2015, the Claimants submitted their Statement of Claim.
- 1.5 On 2 July 2015, the PCA received letters from the Respondent dated 16 June and 1 July 2015, stating that the Respondent “does not recognize the jurisdiction of an international tribunal at the [PCA] in settlement of [the Claimants’ claims under the Treaty],” and that its correspondence should not be interpreted as “consent of the Russian Federation to constitution of an arbitral tribunal, participation in arbitral proceedings, or as procedural actions taken in the framework of the proceedings” (the “**Respondent’s Letters**”).
- 1.6 On 6 July 2015, after receiving copies of the Respondent’s Letters from the PCA, the Tribunal informed the Parties that it considered the content of these letters to constitute an objection by the Respondent to the jurisdiction of the Tribunal and to the admissibility of the Claimants’ claims under Article 21 of the UNCITRAL Rules.
- 1.7 By letter dated 15 July 2015, the Claimants submitted that the Respondent’s Letters should be read as establishing that the Respondent did not intend to participate in these proceedings and would not file a Statement of Defence by the deadline set in the Rules of Procedure. On this basis, the Claimants sought leave to apply to the Tribunal for an accelerated timetable pursuant to which the Tribunal would proceed directly to a hearing on both jurisdiction and the merits. The Tribunal declined the Claimants’ request on 18 August 2015, maintaining the deadline set in the Rules of Procedure for the filing of a Statement of Defence by the Respondent.
- 1.8 The Respondent did not file a Statement of Defence or any Objection to Jurisdiction and/or Admissibility or any Application for Bifurcation by the deadline set in the Rules of Procedure. The Respondent did not request an extension of this deadline or otherwise communicate with the Tribunal.
- 1.9 On 2 October 2015, the Claimants applied to the Tribunal for an accelerated timetable.

- 1.10 On 30 October 2015, the Tribunal issued Procedural Order No. 2, ordering, pursuant to Article 28(1) of the UNCITRAL Rules, that these proceedings continue notwithstanding the Respondent's failure to communicate a Statement of Defence.
- 1.11 On 30 November 2015, in view of the Respondent's failure to communicate a Statement of Defence, and having sought the Respondent's views but having received no reply, the Tribunal issued Procedural Order No. 3, ordering a bifurcated proceeding to address issues of jurisdiction and admissibility in a preliminary phase and prescribing a timetable for the preliminary phase of the proceedings within which (i) the Tribunal would pose questions to the Parties on issues of jurisdiction and admissibility (by 18 December 2015); and (ii) each Party would be afforded an opportunity to respond (by 29 February 2016) and to indicate whether it wished to comment on the responses of the other Party (by 14 March 2016).
- 1.12 On 18 December 2015, the Tribunal addressed 26 questions to the Parties—4 questions to the Claimants and 22 questions to both Parties—regarding issues of jurisdiction and admissibility.
- 1.13 On 19 January 2016, the Tribunal requested that the Parties reserve the dates of 12 to 14 July 2016 for a hearing on jurisdiction and admissibility.
- 1.14 On 29 February 2016, the Claimants submitted their responses to the Tribunal's questions of 18 December 2015. The Respondent neither submitted any responses, nor indicated within the time limit granted whether it wished to comment on the Claimants' responses.
- 1.15 On 19 March 2016, the Tribunal issued Procedural Order No. 4, *inter alia* posing two additional questions regarding issues of jurisdiction and admissibility to the Claimants. The Claimants submitted their responses to the Tribunal's additional questions on 4 April 2016.
- 1.16 On 3 May 2016, having sought the views of the Parties, but having received no comments from the Respondent, the Tribunal admitted into the record of these proceedings a non-disputing party submission by Ukraine addressing certain issues of jurisdiction, and invited the Parties' comments thereon. The Claimants submitted their comments on 16 May 2016. The Respondent did not submit any comments.
- 1.17 On 21 May 2016, having sought the views of the Parties on the experts' selection and terms of reference, but having received no comments from the Respondent, the Tribunal appointed experts on Russian and Ukrainian law in accordance with Article 27 of the UNCITRAL Rules, to report to it in writing on certain issues of Ukrainian civil law and Russian civil law.
- 1.18 On 8 and 14 June 2016, the Tribunal communicated the reports of its experts to the Parties for their comments. Whereas the Claimants submitted their comments on 22 and 28 June 2016, the Respondent did not submit any comments.
- 1.19 The hearing on jurisdiction and admissibility was held in Geneva from 12 to 14 July 2016. Although invited, the Respondent did not attend or otherwise participate. During the hearing, the Tribunal put questions to fact and expert witnesses presented by the Claimants. The experts appointed by the Tribunal also answered questions from the Claimants and the Tribunal. The hearing transcript was delivered to the Parties, and they were granted leave to address questions raised by the Tribunal in the hearing, as well as other matters arising out of the hearing, in post-hearing submissions to be filed by 14 October 2016.

- 1.20 The Claimants filed their post-hearing submissions on 14 October 2016. The Respondent did not file any post-hearing submissions.
- 1.21 On 24 February 2017, the Tribunal issued its unanimous Interim Award, in which it addressed certain issues of jurisdiction and admissibility and joined the consideration of all other issues of jurisdiction or admissibility to the merits of the proceedings (the “**Interim Award**”).
- 1.22 The operative part of the Interim Award reads as follows:

For the foregoing reasons, the Tribunal finds that:

1. the Russian Federation has assumed obligations under the Treaty in respect of the Claimants and their claimed investments in the Crimean Peninsula as of 21 March 2014;
2. the Claimants are “investors” for the purposes of Article 1 of the Treaty;
3. there is a dispute between the Parties arising in connection with what the Claimants allege to constitute “investments” under the Treaty; and
4. the Claimants have satisfied the notice and negotiation requirements under Article 9 of the Treaty.

The Tribunal joins the consideration of all other issues of jurisdiction or admissibility to the merits of the proceedings and defers any decision on the costs of arbitration to the next phase of the arbitration.

- 1.23 On 27 March 2017, the Tribunal re-issued the Interim Award, correcting two typographical errors.
- 1.24 On 22 April 2017, having sought the views of the Parties, but having received no reply from the Respondent, the Tribunal issued Procedural Order No. 6, inviting the Claimants to submit an Amended Statement of Claim (having regard to the Tribunal’s findings in the Interim Award) by 19 May 2017 and the Respondent to submit a Statement of Defence by 16 June 2017. The Tribunal also invited the Parties to reserve the period of 1 to 8 November 2017 for hearings in this matter and the parallel *PCA Case No. 2015-21: JSC CB PrivatBank v. The Russian Federation*.
- 1.25 On 19 May 2017, the Claimants submitted their Amended Statement of Claim.
- 1.26 The Respondent neither submitted a Statement of Defence within the established time limit (*i.e.*, by 16 June 2017), nor requested any extension of that time limit.
- 1.27 On 11 July 2017, the Tribunal issued Procedural Order No. 7, in which it ordered that the proceedings continue and in particular: (i) decided to bifurcate the proceedings between a phase in which it would address the remaining questions of jurisdiction and admissibility, as well as questions of liability, and, in the event that liability was established, a phase in which it would address questions of quantum of damages; and (ii) established a procedural timetable for the first of these two phases, in which the Tribunal would put questions to the Parties in advance of a hearing.
- 1.28 On the same day, 11 July 2017, in accordance with the timetable established in Procedural Order No. 7, the Tribunal addressed 15 questions to the Parties—7 questions to the Claimants and 8 questions to both Parties—regarding issues of liability and remaining issues of jurisdiction and admissibility.

- 1.29 On 17 July 2017, following a request from the Claimants, the Tribunal informed the Parties that, unless the Respondent objected, it was prepared to hear the Claimants on issues of quantum as well as on issues of liability and remaining questions of jurisdiction and admissibility at the upcoming hearing. The Tribunal indicated that it did not make any decision regarding whether, following that hearing and in the event that liability was established, its award would include consideration of issues of quantum or postpone these to a further phase of the proceedings. The Tribunal also addressed two additional questions to the Parties regarding quantum issues. The Respondent did not respond to this communication from the Tribunal.
- 1.30 On 17 August 2017, the Claimants submitted their responses to the questions posed by the Tribunal on 11 and 17 July 2017. The Respondent did not submit any responses.
- 1.31 On 8 and 20 September 2017, having sought the views of the Parties, but having received no comments from the Respondent, the Tribunal instructed the experts in Russian and Ukrainian law whom it had appointed in the earlier phase of the proceedings to produce reports on additional specific issues arising from the Claimants' submissions.
- 1.32 Each Tribunal-appointed expert produced a written report, which was communicated to the Parties for their comments. The Claimants provided comments on the report of the Russian law expert on 27 October 2017. The Respondent did not provide any comments.
- 1.33 A hearing on the remaining issues of admissibility and jurisdiction, as well as on liability and quantum of damages, was held in The Hague on 4, 6 and 7 November 2017. Although invited, the Russian Federation did not attend the hearing or otherwise participate. In the course of the hearing, the Tribunal examined one fact witness, one expert in Russian law and one valuation expert, all presented by the Claimants. The Tribunal-appointed expert on Russian law also appeared for examination. The hearing transcript was delivered to the Parties, and the Parties were further granted leave to address questions raised by the Tribunal in the hearing, as well as other matters arising out of the hearing, in post-hearing submissions. The Tribunal also requested that the Claimants' valuation expert update his valuation report.
- 1.34 The Claimants filed an updated valuation report by their expert on 6 December 2017 and their post-hearing submissions on 13 January 2018. The Russian Federation did not file any post-hearing submissions.
- 1.35 On 5 July 2018, the Tribunal requested certain additional documents from the Parties, which the Claimants provided on 12 July 2018.
- 1.36 By letter to the Parties dated 4 February 2019, the Tribunal recalled that, in July 2017, it had reserved its decision regarding whether, following the hearing of November 2017 and in the event that liability was established, its award would include consideration of issues of quantum or postpone these to a further phase of the proceedings (see paragraph 1.29 above). The Tribunal indicated that, having now studied the record and deliberated, it had arrived at the conclusion that it would require additional information from the Parties in order to decide the issues of quantum and that, accordingly, it had decided to render a partial award on the issues of liability, and the outstanding issues of jurisdiction and admissibility, and to postpone issues of quantum to a further phase of the proceedings in which it will ask the Parties for additional information.
- 1.37 On the same date, 4 February 2019, having deliberated, the Tribunal issued a unanimous Partial Award addressing the Respondent's liability in respect of the Claimants' claims under the Treaty,

as well as all outstanding issues of jurisdiction and admissibility (the “**Partial Award**” and, together with the Interim Award, the “**Awards**”).

1.38 The operative part of the Partial Award reads as follows:

For the foregoing reasons, the Tribunal finds that:

1. the Tribunal has jurisdiction over the Claimants’ claims under the Treaty;
2. the Claimants’ claims are admissible; and
3. the Russian Federation has breached Article 5 of the Treaty in respect of the Claimants’ investment.

The issue of compensation due in the light of this finding of liability and any decision on the costs of arbitration are deferred to a subsequent phase of the arbitration.

1.39 By letter dated 17 May 2019, the Claimants proposed, “in view of the amount of the controversy and the extensive materials concerning quantum already submitted,” that the Tribunal decide the remaining quantum issues on the basis of documents only, without a further hearing.

1.40 By letter dated 28 May 2019, the Tribunal invited the Respondent to comment on the Claimants’ proposal.

1.41 By letter dated 7 June 2019 from Mr. Mikhail Galperin, Representative of the Russian Federation at the European Court of Human Rights and Deputy Minister of Justice of the Russian Federation, the Respondent expressed “its willingness to appear in this Arbitration” and addressed a number of requests to the Tribunal. First, the Respondent stated that it objects to the Tribunal’s jurisdiction and requested that the Tribunal “grant it an appropriate period of time to submit its Statement of Defense in any way dealing with jurisdiction . . . and an oral hearing in order that the Tribunal may revise its earlier Awards.” Referring to Article 15(1) of the UNCITRAL Rules, the Respondent submitted that its request “is appropriate given the continuing responsibility of the Tribunal to satisfy itself of its jurisdiction at each stage of the proceedings.” Further, the Respondent requested that the Tribunal stay these arbitral proceedings pending the outcome of set aside proceedings initiated by the Respondent on 3 June 2019 against the Tribunal’s Awards before the Court of Appeal in The Hague (the “**Set Aside Proceedings**”). The Respondent asserted that “there is a high probability of success” in the Set Aside Proceedings. Finally, in case the Tribunal “at any point in time . . . decides to proceed with the Arbitration,” the Respondent requested that it be given “an adequate opportunity to submit a written defense on issues going to liability and quantum (which regularly overlap) . . . and to elaborate on those defences in an oral hearing.”

1.42 By letter dated 21 June 2019, the Claimants objected to all of the Respondent’s requests, save for its request to submit a written defense on issues of quantum. With respect to the Respondent’s request to make submissions on issues of jurisdiction and liability, including by filing a Statement of Defence, the Claimants argued that: (i) the Tribunal’s Awards, which decide issues of jurisdiction and liability, are final and binding on the Parties pursuant to Article 32(2) of the UNCITRAL Rules and Article 9(3) of the Treaty, and have *res judicata* effect under the law of the seat (*i.e.*, Dutch law); (ii) the Respondent’s requests “come too late”, the arbitration having commenced on 13 January 2015 and the Respondent having had two separate opportunities to file a Statement of Defence in accordance with the timetables set by the Tribunal, on 30 September 2015 and 16 June 2017; (iii) the Tribunal has “more than met” its obligations under Article 15(1)

of the UNCITRAL Rules to treat the parties with equality and to give them a full opportunity of presenting their cases, having requested comments or responses from the Respondent on “48 separate occasions”; and that (iv) the Tribunal’s obligations “do not extend to permitting a party unhappy with the results of its tactical choices to start over from the beginning.” The Claimants further asked the Tribunal to decline to stay these proceedings pending the outcome of the Set Aside Proceedings, as the Awards are unlikely to be set aside. In this connection, the Claimants noted that the Swiss Supreme Court has rejected the Respondent’s set aside applications in similar cases (*PCA Case No. 2015-34: PJSC Uknafta v. The Russian Federation*; *PCA Case No. 2015-35: Stabil LLC et al. v. The Russian Federation*) and that, in examining a request to suspend enforcement of an award pending set aside proceedings in another similar case (*PCA Case No. 2015-36: Everest Estate et al. v. The Russian Federation*), the Hague Court of Appeal found that the Respondent had failed to show that its jurisdictional arguments had “a high chance of success.” Finally, the Claimants objected to any further hearing on issues of quantum and argued that, if the Tribunal decides to hold such a hearing the Respondent should at a minimum first be required to (i) reimburse the Claimants the sums that they have advanced on its behalf toward the fees and expenses of the Tribunal and (ii) make an appropriate deposit toward future expenses.

- 1.43 By letter dated 25 June 2019, the Tribunal recalled that the Respondent had thus far failed to pay its share of the deposits requested by the Tribunal to cover its fees and expenses, most of which share was therefore paid by the Claimants, and requested that the Respondent pay its outstanding share of the deposits, in the total amount of EUR 550,000, by 26 July 2019.
- 1.44 By letter dated 3 July 2019, the Respondent argued that the Tribunal “is not barred from reconsidering its decision on jurisdiction until its mandate has terminated.” Specifically, the Respondent submitted that the Interim Award and the jurisdictional portion of the Partial Award are “interim awards” within the meaning of Article 1049 of the Dutch Code of Civil Procedure (the “DCCP”). Pursuant to Article 1059(1) of the DCCP, arbitral awards have *res judicata* effect (i) only insofar as they contain decisions “concerning the legal relationship in dispute,” which excludes jurisdictional decisions and interim awards; and (ii) only in “other proceedings”, whereas the continuation of an arbitration after the issuance of an award does not constitute “other proceedings”. The Respondent thus argued that, until a final award is issued and the mandate of the Tribunal is terminated, an interim award or jurisdictional decision “can contain nothing more than a ‘binding final decision’,” which the Tribunal may revisit “if due process so requires.” The Respondent further submitted that “if the Tribunal sees even potential merit to the [Respondent’s jurisdictional] arguments,” then its “continuing obligation to satisfy itself of its jurisdiction at every stage of the proceeding” demands that “the Tribunal exercise its discretion and reopen the debate.”
- 1.45 The Respondent concluded by restating its requests to the Tribunal as follows:
 - (i) to permit the Respondent to present written and oral argument in support of its jurisdictional objections; (ii) subject to (i), to order a stay of the Arbitration until the Dutch courts have irrevocably decided upon the Respondent’s request for setting aside the Awards; (iii) if jurisdiction were maintained after (i) and/or (ii), to permit the Respondent the opportunity to raise objections to the claim on the merits and in relation to quantum, including a proper opportunity to challenge (via its own evidence and cross-examination) the claimants’ factual and expert evidence.
- 1.46 On 5 July 2019, the Respondent further wrote that “[f]or regulatory purposes, in order to begin the internal budgetary process” for the payment of the Respondent’s outstanding share of the deposits requested by the Tribunal, “the Russian Federation requires and thus respectfully

requests an explicit decision by the Tribunal confirming the Russian Federation's participation in the Arbitration.”

- 1.47 On 8 and 9 July 2019, the Claimants and the Respondent made further submissions to the Tribunal regarding the Respondent's requests.

2. The Tribunal's Ruling and Directions

- 2.1 As stated in its letter of 3 July 2019, the Respondent requests that the Tribunal: (i) allow the Respondent to make written and oral submissions on jurisdiction; (ii) in the alternative, stay these proceedings pending the outcome of the Set Aside Proceedings; and (iii) if the Tribunal's jurisdiction is confirmed, give the Respondent an opportunity to raise objections in relation to the claim on the merits and quantum, including by way of an evidentiary hearing. The Tribunal addresses the Respondent's requests in turn.

(i) The Respondent's Request to Make Submissions on Jurisdiction

- 2.2 To properly assess the Respondent's request for permission to make written and oral submissions on jurisdiction, it is necessary to consider it in the context of the entire proceedings. As described above, the Tribunal has already conducted two phases of these proceedings in which both Parties have been given a full opportunity to make written and oral submissions, including during two hearings, in respect of issues of jurisdiction and admissibility (as well as issues of liability). The Tribunal has also already issued two Awards addressing issues of jurisdiction and admissibility. In particular, in its Partial Award, the Tribunal decided all issues of jurisdiction and admissibility that remained outstanding after its Interim Award and found that it “has jurisdiction over the Claimants' claims under the Treaty” and that “the Claimants' claims are admissible.”¹
- 2.3 The Tribunal's Awards are final and binding on the Parties. Pursuant to Article 9(3) of the Treaty, from which the Tribunal derives its jurisdiction, the “arbitral award shall be final and binding upon both parties to the dispute.” Article 32(2) of the UNCITRAL Rules, which apply by virtue of Article 9(2)(c) of the Treaty, similarly provides that arbitral awards “shall be final and binding on the parties.” Moreover, although the Respondent argues that the Tribunal's jurisdictional decisions set out in its Awards do not have *res judicata* effect, it recognizes that they are at least “binding final decision[s]” under Dutch law.²
- 2.4 It follows that the question for the Tribunal is not simply whether to allow the Respondent to make submissions on issues of jurisdiction, but whether to reopen the proceedings in respect of those issues with a view to potentially reconsidering the final and binding jurisdictional decisions set out in its Awards. Regardless of whether the Tribunal has the power to do so, be it under Dutch law, the Treaty, the UNCITRAL Rules, the Tribunal's inherent powers or otherwise, the Tribunal considers that the present circumstances do not warrant reopening the proceedings.

¹ Partial Award, p. 101, Decision.

² Respondent's letter dated 3 July 2019, p. 4.

2.5 The Respondent submits that the Tribunal has a “continuing obligation to satisfy itself of its jurisdiction at every stage of the proceeding” and refers to Article 15(1) of the UNCITRAL Rules, which provides that:

[s]ubject to these Rules, the arbitral 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 his case.³

2.6 The Tribunal has taken seriously its obligation to satisfy itself of its own jurisdiction despite the non-participation of the Respondent in the proceedings, having tested the Claimants’ evidence and argument over the last two phases of the proceedings, in particular by putting numerous questions to the Parties (see paragraphs 1.12 to 1.15 and 1.28 to 1.30 above) and appointing independent experts on Ukrainian and Russian law (see paragraphs 1.17 to 1.19 and 1.31 to 1.33 above), before examining and deciding upon these issues in detail in its Awards.

2.7 Moreover, in the four and half years since the commencement of these proceedings, the Tribunal considers that it has given the Respondent an equal and full opportunity to participate and make submissions on issues of jurisdiction and admissibility (as well as issues of liability). Thus, Tribunal has (i) afforded the Respondent, as with the Claimants, an opportunity to express its views on each proposed procedural step throughout the proceedings, including by inviting its comments on drafts of procedural timetables; (ii) granted the Respondent equal and sufficient time to file a Statement of Defence and any Objection to Jurisdiction and/or Admissibility; (iii) granted the Respondent equal and sufficient time to respond to the Tribunal’s written questions on substantive issues, including with respect to issues of jurisdiction and admissibility (as well as issues of liability); (iv) granted the Respondent equal and sufficient time to submit responses to the written pleadings and other communications from the Claimants, including with respect to issues of jurisdiction and admissibility (as well as issues of liability); (v) invited the Respondent, as with the Claimants, to comment on the proposed candidacy, terms of reference and reports of the independent experts on Russian and Ukrainian law appointed by the Tribunal, notably to address questions relevant to jurisdiction and admissibility; (vi) provided the Respondent adequate notice of the two hearings it has held, both of which addressed issues of jurisdiction and admissibility (while the second hearing also addressed issues of liability and quantum); (vii) provided the Respondent, in a timely manner, with the transcripts and all other documents submitted in the course of the hearings; and (viii) provided an opportunity for, and invited, the Respondent to comment on anything said during the hearings.⁴ The Respondent did not avail itself of any of these opportunities to participate in the proceedings and make submissions on issues of jurisdiction and admissibility (or issues of liability).

2.8 Having failed to abide by any of the deadlines set by the Tribunal or otherwise make its views known upon any of the dozens of invitations extended by the Tribunal prior to the issuance of its Awards, the Tribunal is unable to see any compelling reason why the Respondent should now be allowed to make submissions on issues that have already been decided by the Tribunal in those Awards. In particular, it is apparent both from the Respondent’s Letters to the PCA of 16 June and 1 July 2015, and from its recent letters to the Tribunal of 6 June and 3 July 2019, that the Respondent previously failed to make submissions not because it was in any way prevented from doing so, but because it elected not to do so.

2.9 The Tribunal is also mindful of the Claimants’ interest in the finality of the Awards and the Tribunal’s duty to conduct the proceedings in an efficient and proportionate manner. Substantial

³ Respondent’s letter dated 7 June 2019, p. 2; Respondent’s letter dated 3 July 2019, p. 1.

⁴ See Interim Award, para. 168; Partial Award, para. 201.

delay would inevitably result if the Respondent's request were granted. Moreover, now that the Dutch courts are seised of the Set Aside Proceedings and will have the final word as the courts of the legal seat of this arbitration, a further examination by the Tribunal of its own competence is neither necessary nor likely to materially assist the Dutch courts in discharging their supervisory jurisdiction.

- 2.10 In contrast, the Tribunal considers that the Respondent will not suffer prejudice if the Tribunal denies its request to make submissions on jurisdiction before this Tribunal, as it will have the opportunity to make all of its jurisdictional arguments before the Hague Court of Appeal in the Set Aside Proceedings. Indeed, the jurisdictional objections summarized in the Respondent's recent correspondence replicate those already made in the Respondent's writ of summons in the Set Aside Proceedings as grounds for the set aside of the Awards.⁵
- 2.11 In any event, having reviewed the jurisdictional objections summarized in the Respondent's recent correspondence, as well as the Respondent's writ of summons in the Set Aside Proceedings, the Tribunal considers that its Awards address both the threshold jurisdictional issue of the application of the Treaty between the Russian Federation and Ukraine in respect of the Crimean Peninsula in the period from February 2014 onwards, and all other applicable jurisdictional and admissibility requirements under the Treaty.
- 2.12 The Tribunal accordingly denies the Respondent's request for permission to make written and oral submissions on jurisdiction.

(ii) *The Respondent's Request for a Stay of Proceedings*

- 2.13 In the alternative to its request for permission to make submissions on jurisdiction, the Respondent requests that the Tribunal stay these proceedings pending the outcome of the Set Aside Proceedings.
- 2.14 The Respondent does not cite, and the Tribunal is not aware of, any provision of the Treaty, the UNCITRAL Rules or Dutch law, or any other applicable rule of international law, that would require the Tribunal to stay the proceedings. The question is thus whether the Tribunal should, in the exercise of its discretion to conduct the arbitration in such manner as it considers appropriate, stay its proceedings pending the outcome of the Set Aside Proceedings.
- 2.15 The Tribunal considers that it is for the Respondent to establish that a stay is justified by the circumstances. Article 1036(3) of the DCCP requires the Tribunal to "guard against unreasonable delay in the proceedings." Yet, substantial delay is likely to result from a stay of these proceedings pending the outcome of the Set Aside Proceedings, particularly if a decision of the Hague Court of Appeal is thereafter appealed to the Hoge Raad (Dutch Supreme Court). The Respondent must therefore demonstrate that this delay is reasonable and justified by the circumstances.
- 2.16 The Respondent puts forward a single argument in support of its request: it asserts that its application for set aside is likely to be successful.⁶ The Claimants dispute this assertion.⁷
- 2.17 The issue of the likelihood of the Respondent's success in the Set Aside Proceedings is not a matter for this Tribunal, but for the Hague Court of Appeal, as the authority duly charged with deciding the Respondent's set aside application under Dutch law. The Tribunal accordingly

⁵ Annex 2 to the Respondent's letter dated 7 June 2019.

⁶ Respondent's letter dated 7 June 2019, p. 2; Respondent's letter dated 3 July 2019, pp. 6-7, 9.

⁷ Claimants' letter dated 21 June 2019, pp. 5-6.

considers that deference requires it to forebear from any comment on its appreciation of the issues engaged in the Set Aside Proceedings. Yet, the Tribunal, in common with any tribunal of law and aside from the consideration of questions that will properly be addressed by the Hague Court of Appeal, ought nevertheless to consider whether a stay of its proceedings may properly be warranted in the interests of the administration of justice.

- 2.18 Having regard to its Awards, the issues that remain to be addressed in these proceedings, and the jurisdictional objections summarized in the Respondent's recent correspondence and the Respondent's writ of summons in the Set Aside Proceedings, the Tribunal concludes that a stay of its proceedings is not warranted in the interests of the administration of justice. The continuation of the proceedings will not prejudice the proper conduct of the Set Aside Proceedings. Nor will the failure to stay impede the Tribunal's ability to fully and properly examine and decide the remaining issues before it.
- 2.19 The Tribunal accordingly denies the Respondent's request to stay these proceedings pending the outcome of the Set Aside Proceedings.
- (iii) *The Respondent's Request for Permission to Raise Objections in relation to the Claim on the Merits and Quantum*
- 2.20 Having denied the Respondent's request to make submissions on jurisdiction and declined to stay these proceedings pending the outcome of the Set Aside Proceedings, the Tribunal must address the Respondent's request for permission to raise objections in relation to the Claimants' claim on the merits and quantum, including by way of an evidentiary hearing.
- 2.21 In its Partial Award, the Tribunal held that "the Russian Federation has breached Article 5 of the Treaty in respect of the Claimants' investment."⁸ Insofar as the Respondent is now requesting that the Tribunal reconsider that finding of liability, the Tribunal considers that such a reopening of proceedings is unwarranted in the present circumstances for all of the reasons set out at paragraphs 2.2-2.9 above in respect of the Respondent's similar request to make submissions on jurisdiction. As with jurisdiction, the Respondent has had an equal and full opportunity to make submissions regarding issues of liability. As with jurisdiction, the Respondent missed the numerous deadlines set by the Tribunal for its submissions on issues of liability, and has not cited any compelling reason why it should now be allowed to make submissions long after those deadlines have expired. Here too, the Tribunal is mindful of the Claimants' interest in the finality of the Awards and of the delay that would inevitably result if the Respondent's request were granted.
- 2.22 The situation is different with respect to the part of the Respondent's request that concerns the issue of compensation due in the light of the Tribunal's finding of liability. Although at earlier stages of the proceedings, the Tribunal gave both Parties the opportunity to make submissions and present evidence on issues of compensation, including in a hearing, the debates in respect of these issues were not yet closed when the Respondent submitted its request to the Tribunal. As noted in its letter to the Parties of 4 February 2019, the Tribunal, after considering the record and deliberating, arrived at the conclusion that it would require additional information from the Parties in order to decide the issue of compensation. In its Partial Award, the Tribunal accordingly deferred the issue of compensation due in the light of its finding of liability to a subsequent phase of the proceedings.⁹

⁸ Partial Award, p. 101, Decision.

⁹ Partial Award, p. 101, Decision.

- 2.23 In these circumstances, the Tribunal considers that it would be appropriate to allow the Respondent to file a written submission on the issue of compensation due in the light of the Tribunal's finding of liability, and that it would be equally appropriate to give the Claimants an opportunity to reply to the Respondent's submission. Each Party's submission may be accompanied by any exhibits, legal authorities, witness statements or expert reports that the Party wishes to rely on in support of its submission. The Tribunal will then consider whether any further procedural steps are warranted after receiving the Parties' submissions.
- 2.24 The Tribunal accordingly denies the Respondent's request to raise objections in relation to the Claimants' claim on the merits and quantum insofar as it seeks a reconsideration of the Tribunal's finding in its Partial Award that the Respondent has breached Article 5 of the Treaty, and grants the Respondent's request insofar as it seeks an opportunity to make written submissions on the issues of compensation due in the light of the Tribunal's finding of liability.
- 2.25 The Tribunal invites the Parties to revert to it by **Friday, 31 August 2019** with their respective proposals for the time limits to be set for the filing of the Respondent's submission on compensation and the Claimants' reply thereto.
- 2.26 The Tribunal further reminds the Respondent that its share of the deposits requested by the Tribunal in these proceedings, in the total amount of EUR 550,000, remains outstanding. The Respondent is requested to make these deposits in fulfilment of its obligations under the UNCITRAL Rules and the Rules of Procedure. The Tribunal further observes that this deposit is necessary in the light of the additional costs that will be incurred as a result of the Tribunal's above decision to allow the Respondent to make written submissions at a late stage of the proceedings.

Date: 21 August 2019

Place of Arbitration: The Hague, the Netherlands



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