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Per Aspera and Yukos: Has the Biggest Arbitration Claim in History Affected Russian-Western Space Programmes?

Dmitry Artyukhov (Russian Arbitration Association) · Thursday, April 29th, 2021

The dispute between the former owners of the Yukos oil company and the Russian Federation concerning damages of more than US\$50 billion is the largest in the history of arbitration. With thousands of pages written on the topic, the dispute has been summarized in earlier posts (see, amongst others, [here](#) and [here](#)). Following three arbitrations at the Permanent Court of Arbitration (PCA) in the Hague ending with the final awards laid out on more than 600 pages per arbitration, the former shareholders attempted to enforce the awards by seizing assets allegedly associated with the Russian Federation. Those assets varied from intellectual property rights for vodka brands in Benelux to a historic building in Paris (the Russian cultural orthodox centre), but also assets associated with space programmes. This post will provide an update concerning enforcement actions in Europe regarding enforcement actions vis-à-vis Russian Federation-linked space assets. It will also briefly refer to other assets associated with space activities that may, in the author's view, be subject to further enforcement actions in the Yukos matter.

Enforcement Actions in Europe against Russian Federation-Linked Space Assets

Already, the former shareholders involved in the Yukos claims have initiated various enforcement actions to recover the compensation awarded through the PCA arbitrations from the Russian Federation. One set of enforcement actions relates to Eutelsat and RSCC. A [2021 report](#) released by the French Institute of International Relations states that “the Russian space sector suffers from legal disputes that affect its cooperation with its Western partners”. For instance, the Yukos shareholder, Hulley Enterprises, registered in Nicosia, Cyprus, [attached](#) a EUR 380 million debt of the French satellite operator Eutelsat to the Russian satellite operator, Russian Satellite Communications Company (RSCC) in 2015. The Paris Court of Appeal lifted the attachment and released this sum in 2016. This was on the grounds that RSCC had a distinct legal personality and was not liable for debts due by the Russian Federation. The court indicated that RSCC was not the debtor under the abovementioned arbitral awards against the Russian Federation.

In proceedings parallel to the ones regarding Eutelsat and RSCC, Hulley Enterprises together with another former Yukos shareholder, Veteran Petroleum, attempted to seize a EUR 300 million payment of Arianespace to Roscosmos. Roscosmos was a counterparty to a contract under which Russian companies provided medium-lift Russian Soyuz rockets for use by Arianespace. Hulley Enterprises and Veteran Petroleum seized debts in the hands of Arianespace, making the latter's

obligations unavailable towards the Russian Federation and its federal agencies, including Roscosmos. The former Yukos shareholders argued that for all intents and purposes RSCC and Roscosmos were acting on behalf of the Russian Federation. The enforcement judge of Evry lifted the attachment in 2016, which led the former Yukos shareholders to appeal against such ruling.

In 2016, the Paris Court of Appeal [suspended](#) the execution of judgment to seize these payments. The debts seized in the hands of Arianespace could not serve as a pledge to Veteran Petroleum under French law. One of the main arguments to support this was that Roscosmos was not responsible for the obligations of the Russian Federation under the arbitration, as Roscosmos was a proper and autonomous entity, did not act in the name and on behalf of the Russian Federation during its contractual relations with Arianespace, and that the debts of Arianespace were not due to the Russian Federation itself. It is worth noting that France had intervened in this litigation as an indirect shareholder in Arianespace, arguing that the confirmation of the attachment could have adverse effects on the value of the company.

Eventually, the Paris Court of Appeal confirmed the lifting of the attachment of Roscosmos receivables in 2017. The cooperation between Arianespace and Roscosmos continues, and, on 25 March 2021, the Russian Soyuz-2.1b rocket has put 36 OneWeb satellites in orbit, which means the business ties between the French and the Russian counterparts remain intact despite the Yukos enforcement actions.

The Roscosmos receivables were not the only assets attached by the former Yukos shareholders. Other receivables from Arianespace, which were attached in 2016, included those of the Russian aerospace company, NPO Lavochkin (known for spacecrafts that have explored the Moon and Venus) and the cosmodrome facility builder, TsENKI (which runs the Baikonur and Vostochny launch pads). In the year thereafter, the enforcement judge of Evry lifted said attachments earlier levied by Veteran Petroleum. The former Yukos shareholder appealed against this decision, with the Paris Court of Appeal dismissing the case in 2018.

Future Enforcement Actions against (Allegedly) Russian Federation-Linked Space Assets?

With attachments of amounts owed under space contracts lifted in Europe, litigation linked to the Yukos awards is still pending in the U.S., with ex-Yukos shareholders currently seeking the lifting of a recent stay of enforcement. At present, it remains unknown what assets the former Yukos shareholders would wish to attach in the U.S.

At the time of writing, one of the most recent U.S. court decisions in Yukos was issued in November 2020 by the District Court for the District of Columbia, where the Yukos shareholders had filed a petition to enforce the Yukos awards in 2014.¹⁾ The D.C. courts had stayed enforcement proceedings in 2016 as the arbitration awards were being reviewed by the Court of Appeal of the Hague, and did so again in November 2020 with the abovementioned decision, pending the setting aside proceedings before the Supreme Court of the Netherlands. The relevant [court's relevant memorandum opinion](#) states that Russia "has significant assets in the United States", however, none of them in particular are mentioned.

In the space sector, Russia and the U.S. have contracts that have survived sanctions and political tension. Following the abovementioned attempts to seize payments due under satellite launch and

services contracts already taken in Europe, Russia-U.S. space programme-related assets may be subject to enforcement actions in the Yukos matter.

One of the relevant assets may be payments for RD-180 rocket engines built by the Russian company, NPO Energomash (see also [here](#)). These engines are installed and used for the core lift stage of the American Atlas V rocket, produced by United Launch Alliance (ULA), a joint venture between Boeing and Lockheed Martin Co. The U.S. rocket builders used to import the engines, but faced the obstacle of sanctions imposed against Russia in 2014. Further to a complaint filed with the U.S. Court of Federal Claims alleging contracts between ULA and Energomash violated U.S. sanctions against the then Russian Deputy Prime Minister Rogozin (now head of Roscosmos), the court temporarily [barred](#) United Launch Alliance and the U.S. Air Forces “from making any purchases from or payment of money to NPO Energomash or any entity (...) that is subject to the control of Deputy Prime Minister Rogozin” on 30 April 2014 until receiving opinions from the Departments of State and Commerce that such payments would not violate the sanctions imposed on Rogozin.

Although the temporary injunction was lifted beginning of May 2014, the U.S. Congress issued a ban against the further purchase of the Russian-made engines. However, such a ban was eventually [lifted](#), allowing ULA to purchase RD-180 engines for its Atlas V fleet – for which the company immediately submitted an order for 20 more RD-180s. In total, NPO Energomash was reported to have delivered a total of 122 RD-180 engines to the U.S., with an average price of US\$15 million per unit, as of 2018. The last batch of 6 such engines was built in 2020 and was handed over to the buyers on 14 April 2021.

One more US rocket – Antares – is also built using the RD-181 Russian rocket engines. The Antares rockets are used to launch the Cygnus resupply spacecraft to service the International Space Station (ISS). Media reports at least 4 successful launches so far. A contract for 20 RD-181 engines [has been signed](#) with RSC Energia, the parent company of NPO Energomash, and could also lead to enforcement actions in the U.S.

Another flow of payments to the Russian Federation linked with the ISS that may be subject to enforcement actions has been the delivery of NASA astronauts on the Soyuz spacecraft, which started in 2006. Russia has earned US\$3.9 billion for these contracts by 2020, according to researchers. While the U.S. may eventually replace these contracts and hire other companies to lift the astronauts to orbit in the near future, an intervention by the state in support of space programmes in potential enforcement proceedings would not be unimaginable, considering the French state’s intervention in the Arianespace case. The U.S. stance towards space programmes can also be derived from the recent U.S. Department of Commerce’s Bureau of Industry and Security (BIS) decision to specially temporarily waive its ban on exports to Russia on items in support of commercial space launch activities.

Conclusion

While enforcement proceedings have already taken place regarding assets concerning space programmes, it seems that the Yukos dispute has only affected such projects indirectly to date. However, it is not to be excluded that the Yukos case can lead to further enforcement requests with regard to assets concerning space activity in the future.

The fate of such requests is to be seen, especially considering that space activities mainly remain in the realm of the states. While potential battles regarding space cooperation programmes will be fought in court, the political interests of the states concerned may not be ignored.

Disclaimer: The views and opinions expressed in this article are those of the author's only and not of the Russian Arbitration Association.

[1] It is noted that at the time of writing, the U.S. Court of Appeals for the District of Columbia Circuit issued an order (on 9 April 2021), denying the motion for summary affirmance of the Yukos awards and ordering that the motion to dismiss be referred to a merits panel.


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