SVEA COURT OF APPEAL	**JUDGMENT**	Case No.
Department 02	25 June 2015	T 2289-14
Division 020101	Stockholm	

CLAIMANT
OAO Tyumenneftegaz
67 Lenin Street
625000 Tyumen
Russia

Counsel: Advokat Jonas Eklund, advokdat Cecilia Möller Norsted and advokat Christer Söderlund and jur.kand. Sebastian Fichtel
Advokatfirman Vinge KB
P.O. Box 1703
111 87 Stockholm

RESPONDENT
First National Petroleum Corporation
2973 Bingle Road,
Houston TX 77055
USA

Counsel: Advokat Hans Dahlberg Kolga and advokat Magnus Fridh and jur. kand. Filippa Wassberg
Setterwalls Advokatbyrå AB
P.O. Box 1050
101 39 Stockholm

MATTER
Challenge of arbitration award given on 9 December 2013, see appendix A

JUDGMENT OF THE COURT OF APPEAL

1. The Court of Appeal annuls the arbitration award of 9 December 2013 between the parties in its entirety.

2. First National Petroleum Corporation is ordered to compensate OAO Tyumenneftegaz for its litigation costs in the amount of SEK 5,955,807, of which SEK 5,000,000 comprises costs for legal counsel, plus interest on the amount pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.

Postal Address	Visiting address	Telephone	Telefax	Opening Hours
P.O. Box 2290	Birger Jarls Torg 16	08-561 670 00	08-561 675 09	Monday – Friday
103 17 Stockholm		08-561 675 00		9:00 am – 3:00 pm
		e-mail: svea.avd2@dom.se		
		www.svea.se		

BACKGROUND

By way of an arbitration award of 9 December 2013 given in Stockholm, the arbitral tribunal resolved a dispute between First National Petroleum Corporation (FNP) and OAO Tyummeneftegas [*sic!*] (TNG). The arbitral tribunal comprised arbitrators Mr. B (appointed by FNP), Mr. L (appointed by TNG) and the chairman Mr. L (appointed by the Arbitration Institute of the Stockholm Chamber of Commerce, SCC).

The background to the dispute was a cooperation agreement, a so-called joint venture agreement, entered between the parties in 1992 for the exploitation of an oil field in Siberia through a jointly owned company, Tyumtex. In the arbitration, FNP asserted that TNG had breached the agreement and thus claimed compensation for losses due to breach of contract. According to the arbitration award, the breaches referenced by FNP were the following.

1. Failure to transfer to Tyumtex a concession to exploit the oil field (the concession breach, arbitration award p. 41, paragraph 10.2).
2. Misleading information on oil flow rates and the transferability of the concession to Tyumtex (the Paris breach) as well as the failure to rectify the incorrect information (*failure to rectify*, arbitration award p 44-45, paragraphs 10.17 and 10.18).
3. In breach of the agreement, TNG entered another joint venture agreement for the exploitation of the same oil field with a third party (the exclusivity breach, arbitration award p. 46-47, paragraph 10.28).
4. Through forging documents, TNG succeeding in liquidating Tyumtex, despite FNP not having agreed thereto (the liquidation breach, arbitration award p. 47-48, paragraphs 10.36 and 10.37).

The arbitral tribunal concluded that TNG had committed all of the breaches of contract referenced by FNP. TNG was ordered to compensate FNP for losses. The amount for which TNG was held liable corresponded roughly to the amount claimed by FNP. TNG was also ordered to compensate FNP's litigation costs in the arbitration. The arbitral tribunal also ordered TNG to bear the costs of the arbitration as between the parties.

MOTIONS ETC.

TNG has moved that the Court of Appeal shall annul the arbitration award of 9 December 2013 in its entirety.

FNP has disputed the annulment of the arbitration award.

The parties have claimed compensation for litigation costs.

GROUNDS

TNG has referenced the following in support of its case.

1. Excess of mandate and procedural errors

1.1 The arbitral tribunal has exceeded its mandate, or at least committed a procedural error, by considering circumstances which had not been referenced by the parties concerning oil reserves

Excess of mandate

The arbitral tribunal was only to try the circumstances set forth in a document named "Joint Summary of Legal Grounds" (Summary). The parties accepted this and acted accordingly. In the Summary, FNP merely referenced that TNG had provided misleading information with respect to oil flow rates and not with respect to oil reserves. FNP did not reference anything with respect to oil reserves.

The arbitral tribunal nevertheless considered whether TNG had provided misleading information concerning oil reserves. The arbitral tribunal concluded, amongst other things, that TNG had provided information on oil reserves, that the information was incorrect, that TNG was aware that the information was incorrect, and that TNG had thus misled FNP with respect to oil reserves. The arbitral tribunal also concluded that FNP abandoned the project due to the misleading information provided by TNG with respect to oil reserves and that TNG subsequently failed to correct the misleading information. Thereby, the arbitral tribunal exceeded its mandate.

Even if the Court of Appeal were to conclude that the arbitral tribunal was not bound by the Summary, FNP did not in other procedural materials in the arbitration assert that TNG had provided misleading information with respect to oil reserves.

Nowhere in the Summary or elsewhere in the procedural documentation is it provided that the term oil flow rates would include also the term oil reserves. The parties did not agree on this. Further, nowhere in the Summary is it provided that the flow rates would be a function of the reserves. Oil flow rates are not a function of, or dependent on, the size of the oil reserves. The parties did not maintain this. Both TNG and FNP distinguished between the terms oil flow rates and oil reserves during the arbitration. If FNP would have maintained that there was no difference between the two terms, TNG would have referenced evidence hereon, but this was not the case.

TNG could not have understood, and did not understand, that FNP referenced misleading information with respect to oil reserves as grounds for its case. If FNP had maintained that the reserves were "close to zero", then TNG would have referenced further evidence, amongst other things that no such information had been provided and that oil flow rates and oil reserves are not the same thing. Since FNP did not assert that TNG had provided misleading information with respect to oil reserves, TNG did not dispute any such assertion and did not reference any evidence to disprove any such assertion. This is evident from the Summary and TNG's submissions. Thus, TNG was deprived of its right to sufficiently argue its case.

Failure to rectify

The arbitral tribunal also based its conclusion of TNG's failure to rectify the incorrect information on circumstances that had not been referenced. FNP did not reference that information with respect to oil reserves should have been rectified. FNP did not reference whether, and if so when, the correct information would have become known to TNG. Further, FNP did not reference what the correct information that TNG would have received would have contained. Nevertheless the arbitral tribunal reviewed TNG's obligation to rectify the incorrect information with respect to oil reserves.

By basing its conclusions on circumstances which had not been referenced by FNP, the arbitral tribunal exceeded its mandate.

The arbitral tribunal has committed a procedural error

If the arbitral tribunal considered the Summary to cover also oil reserves, it should have informed TNG thereof. The failure to do so constitutes a procedural error, which affected the outcome of the arbitration.

TNG's right is not precluded

TNG has not lost its right to reference excess of mandate with respect to oil reserves as grounds for the challenge. TNG had no reason to assume that FNP would reference new or other circumstances than those provided in the Summary. Thus, there have been no grounds to object.

1.2 The arbitral tribunal has exceeded its mandate, or committed a procedural error, by considering circumstances which had not been referenced by a party with respect to registration of the concession

Despite the fact that no such assertion had been made in the arbitration, the arbitral tribunal based its conclusion the fact that concession for the rights to the oil field had been subjected to registration by Russian authorities on 1 April 1994. In its opening statement in the arbitration, FNP maintained that TNG was granted the concession on 4 March 1993 and never mentioned the date 1 April 1994.

Against the background of the registration on 1 April 1994, the arbitral tribunal concluded that a representative of TNG, Mr. P, at the time of the meeting between the parties in Paris in June of 1993 (the Paris meeting) and thereafter until 1 April 1994 was aware that the oil reserves in the oil field amounted to 33.6 million tons. Thus, the information impacted the arbitral tribunal's conclusion that the information allegedly provided by Mr. P at the Paris meeting was misleading.

1.3 The arbitral tribunal exceeded its mandate by basing its conclusion on a not referenced and illegal interpretation of the law with respect to the transfer of the concession

FNP never maintained that TNG would have been obliged to transfer the concession to exploit the oil field to Tyumtex in breach of Russian law, or that any case law in Russia to the effect concluded by the arbitral tribunal ever existed.

The fact that an illegal interpretation of the law has evolved in Russia is a circumstance which must be referenced by a party. By basing its decision on that interpretation without FNP having referenced the interpretation the arbitral tribunal exceeded its mandate. FNP merely presented the existence of the case law and the obligation to act in accordance therewith as counter-facts to TNG's position that it had not been obliged to transfer the concession. These counter-facts are not set out in the Summary.

1.4 The arbitral tribunal exceeded its mandate or committed a procedural error by failing to review TNG's objection that correct information was provided with respect to oil flow rates and by not considering evidence presented thereon

The arbitral tribunal did not review whether the information provided was objectively correct. The arbitral tribunal also did not review whether TNG's representative at the Paris meeting, Mr. P, believed that the information he provided was correct. This constitutes a procedural error as well as an excess of mandate.

In the arbitration award, the arbitral tribunal explicitly stated that no evidence had been presented with respect to new information on geological data, despite that TNG had referenced evidence on this issue.

The errors affected the outcome. If the arbitral tribunal had considered the evidence on updated oil flow rates, it would have been unable to conclude anything but that Mr. P believed that the information on oil flow rates "close to zero" was correct. In the arbitration award, the arbitral tribunal explained that it based its further conclusions on the incorrect fact that at the time of the Paris meeting, there was no new information with respect to oil flow rates.

1.5 The arbitral tribunal has committed a procedural error in connection with the issue of FNP's ability to provide financing

In the arbitration, TNG referenced evidence on FNP's inability meet its financial obligations with respect to Tyumtex. This was a pivotal issue in the arbitration. The arbitral tribunal did not consider the evidence referenced by TNG. The arbitral tribunal did not evaluate the evidence referenced by TNG, and instead disregarded it. This constitutes a procedural error.

The procedural error affected the outcome. The disregarded evidence would have caused the arbitral tribunal to conclude that FNP did not have the ability to provide financing and would have been unable to fulfill the project in compliance with the parties' agreement. This would have excluded the right to compensation for losses and thus affected the outcome in the case.

1.6 The arbitral tribunal committed a procedural error and exceeded its mandate in connection with the issue of FNP's contribution of bonds

The parties' agreement provides that FNP should initially contribute USD 21.1 million to Tyumtex. To fulfill this obligation, FNP contributed certain equipment and claimed to contribute bonds of an alleged nominal value of USD 18 million. During the arbitration it was uncovered that the bonds were not worth USD 18 million, but rather USD 1.4 million. Thus, FNP had intentionally misled TNG on the value of the bonds at the Paris meeting. TNG objected hereon during the arbitration.

The arbitral tribunal committed a procedural error by not considering any evidence with respect to the bonds or any documentation submitted by TNG or FNP. TNG submitted evidence in the form of the minutes from the Paris meeting. If the arbitral tribunal had considered the evidence, it could not have concluded anything but that FNP had failed to fulfill its financing obligations. Thus, the losses FNP claimed to have incurred could then not have been considered to have been caused by the alleged breaches of contract. Therefore, the error affected the outcome.

Further, the arbitral tribunal based its conclusion on the value of the bonds on "the very distant maturity dates". FNP did not maintain that it had informed TNG on the maturity dates or the TNG was aware thereof. Only during the arbitration did TNG discover that the bonds fell matured thirty years later. Further, FNP did not maintain that TNG had understood, or ought to have understood, that the value of the bonds was lower than USD 18 million. Thus, the arbitral tribunal based its conclusion on a circumstance which had not been referenced. This constitutes an excess of mandate.

1.7 The arbitral tribunal exceeded its mandate, or at least committed a procedural error, in its dealings with the issue of statute of limitations

In the arbitration, TNG objected that FNP's claim for compensation for losses was barred by the statute of limitations. The arbitral tribunal concluded that the claim was not barred by the statute of limitations, due to the fact that a breach of contract had occurred later than the breach defined by the arbitral tribunal as the Paris breach. Interruption to the time period in the form of breach of contract was not referenced by FNP. The arbitral tribunal's reasoning in this respect constitutes an excess of mandate or at least a procedural error.

The procedural error affected the outcome in the case. If the arbitral tribunal had not committed the error, it would have concluded that FNP's claim based on a breach of contract at the Paris meeting was barred by the statute of limitations.

1.8 The requirement that errors affected the outcome

All procedural errors affected the outcome of the case.

For the instances where an excess of mandate was committed, no such requirement applies.

Even if the requirement would apply to instances of excesses of mandate, the arbitration award shall be annulled. The excesses of mandate were in any event of determining importance for the granting of FNP's case. Moreover, it is not obvious that the outcome would have been the same if the arbitral tribunal had not exceeded its mandate with respect to the oil reserves. The liquidation breach did not constitute autonomous grounds, but was directly related to and dependent on the arbitral tribunal's conclusions with respect to the Paris breach.

If the Court of Appeal would nevertheless conclude that the requirement that the outcome was affected applies also to excesses of mandate, it is FNP that bears the burden of proof that the outcome was not affected by the excesses of mandate.

2. The arbitral tribunal lacked jurisdiction due to circumstance set out in Section 8 of the Swedish Arbitration Act (1999:116)

2.1 The arbitrator Mr. B was challengeable

Mr. B has previously been counsel in several disputes in which claims have been brought against TNG's parent company Rosneft as well as the Russian Federation, which owns the Rosneft group. This involves at least seven cases on behalf of the Yukos group before US courts, as well as in arbitrations.

The cases against Rosneft and the Russian Federation were of utmost importance to Mr. B's client. Mr. B and his law firm also had assignments for this client during – as far as is known – seven years (2001-2007) and thus received fees from the client during a long time. It can therefore be assumed that Mr. B remains loyal to his previous client.

Further, Mr. B has in several submissions in the case stated that Rosneft and its actions were exceptionable. Mr. B has also presented an image in which Rosneft in collaboration with the Russian Federation in a striking and elaborate manner acted to the detriment of Mr. B's client.

The conflict of interest situation arose during October of 2012, when it became public that Rosneft would acquire TNG's parent company. The circumstances underlying the challengeability are of such nature and scope that they are not remedied by the fact that approximately five years had passed.

Mr. B disregarded his obligation to inform on the circumstances that affected his impartiality by not informing the parties that he had been counsel to Yukos in matters against Rosneft. Instead, during the arbitration he incorrectly stated that he had not acted as legal counsel against Rosneft, which is a complicating circumstance in the assessment as to whether circumstances are at hand that would call his impartiality into question.

The circumstances referenced by TNG became known to TNG only after the arbitration award had been rendered. Thus, the time limitations set out Section 10 of the Swedish Arbitration Act (1999:116) and Section 15 (2) of the arbitration rules of the SCC do not apply.

2.2 The arbitral tribunal was biased

The arbitral tribunal systematically and consistently failed to apply customary legal methods. All conclusions of importance to the outcome of the case have been for the detriment of TNG, irrespective of the parties' motions, references and the presented evidence.

The partiality of the arbitral tribunal is evident from the procedural errors and excesses of mandate referenced by TNG and also by the viciousness shown by the arbitral tribunal in its labelling of TNG as a criminal organization not deserving of protection under law.

FNP has referenced the following grounds in support of its case.

3. Asserted excesses of mandate and procedural errors

3.1 The assertion that the arbitral tribunal exceeded its mandate, or at least committed a procedural error, by considering circumstances which had not been referenced by the parties with respect to oil reserves

The arbitral tribunal did not exceed its mandate by reviewing issues with respect to oil reserves.

It was not the Summary as such that framed the arbitral tribunal's mandate. In the arbitration, the arbitral tribunal was authorized to review that which was stated in the Summary as well as elsewhere in the case, i.e. that which the parties had referenced in its submissions and during the main hearing. The parties' respective cases and thus the framing of the mandate was consequently determined by the submissions and at the main hearing. If the arbitral tribunal nevertheless would be deemed to have been bound by the Summary, FNP maintains that the circumstances which are covered by the statements in the Summary were only found in other procedural materials and that the submissions thus served as interpretation data for the Summary. The arbitral tribunal clarified that it would not consider what the parties had maintained in submissions and elsewhere unless it was covered by the scope of the statements in the final version of the Summary. The statements in the Summary covered all oil in the oil field, including the reserves.

In the arbitration FNP referenced that TNG had at the Paris meeting intentionally provided misleading information concerning the oil in the oil field, both as regards oil flow rates as well as oil reserves. FNP referenced grounds and evidence concerning the oil in the oil field. The reference includes also oil reserves. It is evident from TNG's grounds for objection that TNG also understood FNP's case in this manner. TNG has stated that the information provided at the Paris meeting concerning "… the properties of the Oil Field…" was correct.

TNG had every opportunity to understand, and did understand, that FNP referenced misleading information with respect to oil reserves. TNG disputed FNP's assertions with respect to oil reserves and submitted evidence in this respect. Thus, TNG has not been deprived of its right to sufficiently argue its case.

FNP attests that oil flow rates and oil reserves can be defined as two separate things. In the arbitration, however, the parties did not define the terms as TNG now maintains and did not make the distinction that TNG now maintains. The estimated annual production was dependent on and a function of the total estimated reserves.

The question of oil reserves is not to be deemed as a legally relevant circumstance. The legally relevant circumstances in the case was that TNG had fraudulently mislead FNP to undertake certain actions at the Paris meeting by providing FNP with incorrect information. The misleading information related both to the amount of oil in the oil field as well as to the transferability of the concession to Tyumtex. This was entirely clear to TNG.

In any event, TNG has lost its right to reference any excess of mandate. This is clear from FNP's opening and closing statements in the arbitration that FNP's assertions on the misleading at the Paris meeting concerned oil in the oil field including oil reserves. TNG ought to have objected to the new grounds, if TNG considered it to be new in relation to the Summary. TNG did not object. Thus, TNG must be deemed to have refrained from objecting that new grounds had been introduced and TNG's right to challenge based on the alleged excess of mandate is consequently precluded.

FNP's case concerning TNG's failure to rectify the misleading information covered all information FNP had referenced, i.e. also including information on the oil reserves. Thus, the arbitral tribunal did not base its conclusion concerning TNG's failure to rectify incorrect information on circumstances which had not been referenced.

The alleged excesses of mandate did in any event not influence the outcome of the case. The arbitral tribunal concluded that TNG at the Paris meeting, through Mr. P, had provided misleading information on oil flow rates and the transferability of the concession. Thus, breach of contract was established irrespective of the information with respect to oil reserves and should have been rectified by TNG. Moreover, it was another

breach of contract, the liquidation breach, which gave FNP the right to the awarded compensation for losses, since the arbitrators concluded that FNP's claim for compensation based on the Paris breach was barred by statute of limitations.

3.2 The assertion that the arbitral tribunal exceeded its mandate or committed a procedural error by considering circumstances which had not been referenced by the parties with respect to the registration of the concession

Both FNP and TNG in the arbitration referenced a document, which provided that a Russian authority on 4 March 1993 had reviewed whether a concession for the oil field could be granted. On 1 April 1994, the authority had granted the concession by providing a stamp on the document, through which the document was registered. The document was recounted by FNP during the opening statement. The fact that FNP did not at a later stage mention that date does not entail that the document should not be considered submitted into the case. Thus, no excess of mandate or procedural error occurred.

Even if the arbitral tribunal committed an error, it did not affect the outcome of the case, because the issue of whether the concession had been registered or not was irrelevant for the review of the disputed issues in the arbitration. The arbitral tribunal did not from the registration date conclude that TNG had misled FNP.

In addition, the arbitral tribunal concluded that it was the liquidation breach which granted FNP the right to compensation for losses awarded by the arbitral tribunal.

3.3 The assertion that the arbitral tribunal considered a not referenced illegal interpretation of the law for its conclusion on the transferability of the concession

No excess of mandate or procedural error occurred.

The arbitral tribunal reviewed FNP's assertion that TNG was contractually obliged to transfer the concession to Tyumtex and TNG's objection that TNG was not obliged to transfer the concession, that, if this were the case, this involved only a "best effort" undertaking, and that the background of the ever-changing legal regulation at the time constituted a force majeure under the agreement. The review was relevant with respect to the Paris breach. The arbitral tribunal's conclusion was that TNG had intentionally misled FNP concerning the transferability of the concession to Tyumtex.

The arbitration award does not include a conclusion to the effect that TNG would have been forced to breach Russian legislation to transfer the concession.

The conclusions of the arbitral tribunal on the transferability of the concession without a public auction was based on the evidence referenced in the arbitration.

In addition, it was the liquidation breach that granted FNP the right to the awarded compensation, since the arbitral tribunal concluded that FNP's claim for compensation based on the Paris breach was barred by statute of limitations. Thus, the alleged errors did in any event not affect the outcome of the case.

3.4 The allegation that the arbitral tribunal exceeded its mandate or committed a procedural error by not reviewing TNG's objection that the correct information was provided with respect to oil flow rates and by not considering evidence on this issue

The arbitral tribunal reviewed whether the information on oil flow rates provided at the Paris meeting was objectively correct and whether Mr. P thought that the information was correct. Both parties referenced evidence on this issue, and the arbitral tribunal concluded that TNG had not disproved FNP's assertions. There is nothing to indicate that the arbitral tribunal in its review of the size of the oil flow rates or in its evaluation of the evidence disregarded certain evidence referenced by TNG.

If the arbitral tribunal would be deemed to have committed a procedural error, it has not affected the outcome of the case. There was also other evidence establishing that Mr. P had provided incorrect information to FNP at the Paris meeting. The incorrect information that FNP referenced was that Mr. P stated that the oil flow rates were "close to zero".

Further, the liquidation breach alone would have granted FNP's case.

3.5 The assertion that the arbitral tribunal committed a procedural error in connection with the issue of FNP's ability to provide financing

In the arbitration, TNG maintained that FNP had committed a breach of contract by not fulfilling its financing undertakings under the parties' agreement. FNP's ability to provide financing was not a central issue in the arbitration. The arbitral tribunal

concluded that the issue was irrelevant for the breaches of contract referenced by FNP and that TNG had failed to establish that the joint venture would have failed due to outstanding financing. There is nothing to indicate that the arbitral tribunal in its review and evaluation of the evidence disregarded evidence referenced by TNG.

A possible procedural error in this respect did not affect the outcome of the case. TNG's evidence would not have led the arbitral tribunal to conclude that FNP did not have the ability to provide financing and thus unable to complete the project. The evidence referenced by TNG was further not aimed at establishing what FNP's financial position would have been without the relevant breach of contract. It is not correct that the arbitral tribunal deviated from customary rules on the placement of the burden of proof. The arbitral tribunal concluded that FNP had established breach of contract and the causality between the breach of contract and FNP's losses, and that TNG had not established its objection hereon.

In addition, the liquidation breach alone would have led to the arbitral tribunal's granting of FNP's case.

3.6 The assertion that the arbitral tribunal committed a procedural error and exceeded its mandate in connection with the issue of FNP's contribution of bonds

The arbitral tribunal did not fail to consider evidence referenced by TNG in connection with the review of FNP's contribution of bonds.

FNP referenced evidence establishing that TNG at the time of the Paris meeting knew that the value of the bonds did not amount to USD 18 million. The arbitral tribunal concluded that no evidence had been presented which indicated that TNG did not know that the value of the bonds did not amount to USD 18 million or that TNG had been misled to believe so. The arbitral tribunal also concluded that it had not been established that FNP had failed to fulfill its financing obligations.

There is nothing to indicate that the arbitral tribunal failed to consider evidence referenced by TNG. It is not correct that the arbitral tribunal could not have drawn any other conclusion than that FNP had failed to fulfil its financing obligations and that the loss therefore could not be deemed to have been caused by the breaches of contract. Both

parties referenced evidence on the issue and the arbitral tribunal concluded that TNG had failed to establish its assertions.

Further, the arbitral tribunal concluded that TNG's objection was unclear in the sense that any possible failure to comply with a financing obligation did not necessarily lead to a lack of causality with the breaches of contract. In addition, the arbitral tribunal concluded that the objection was entirely irrelevant for the main issues of the case. In any event, any error by the arbitral tribunal in this respect did not affect the outcome of the case.

Further, the liquidation breach alone would have granted FNP's case.

3.7 The assertion that the arbitral tribunal exceeded its mandate or committed a procedural error in its dealings with the issue of statute of limitations

The arbitral tribunal concluded that the liquidation breach was the final breach of contract and that it persisted until 29 July 1999. The arbitral tribunal concluded that the liquidation breach alone, irrespective of the issue of previous breaches of contract, was the underlying cause for the compensation claimed by FNP. Therefore, the arbitral tribunal did not need to decide on the issue of whether the breaches of contract that occurred prior to the liquidation breach were barred by statute of limitations. Thus, the arbitral tribunal did not conclude that any "new breach of contract" prevented the statute of limitations to take effect.

Any possible procedural error or excess of mandate did in any event not affect the outcome. The arbitral tribunal concluded that the liquidation breach and the breach of contract *failure to rectify* continued throughout the contract term and that interruption to the period for the statute of limitations was achieved through the request for arbitration in 2007. Since the entirety of FNP's loss was caused by each of the breaches of contract and that the arbitral tribunal concluded that the liquidation breach and the failure to rectify had not been barred by statute of limitations, the outcome was in any event not affected because the arbitral tribunal concluded that the Paris breach had been barred by statute of limitations.

3.8 The requirement of effect on outcome

None of the alleged procedural errors have affected the outcome.

Case law provides that a requirement that the outcome has been affected applies also to excesses of mandate. FNP disputes TNG's assertion on the allocation of the burden of proof.

The outcome of the case was not affected by any possible procedural errors or excesses of mandate, since the arbitral tribunal has (i) reviewed the breaches of contract and concluded that TNG was liable on all accounts, (ii) concluded that all breaches of contract apart from the exclusivity breach had caused the entirety of FNP's loss, (iii) concluded that the liquidation breach was not barred by statute of limitations, and (iv) because the liquidation breach does not form part of TNG's challenge.

4. The assertion that the arbitral tribunal lacked jurisdiction due to circumstance set out in Section 8 of the Swedish Arbitration Act

4.1 The allegation that arbitrator Mr. B was disqualified

There were no circumstances that could have called into question Mr. B's impartiality.

Mr. B has not provided any misleading information during the arbitration and he was under no obligation to inform. The information he provided during the arbitration was correct. IBA's guidelines of 2004, which apply to the extent Mr. B's actions should be assessed under them, provide that the obligation to inform exists for circumstances during the preceding three years.

TNG did not present its objection on disqualification within the time period provided in Section 10 of the Swedish Arbitration Act (1999:116) and Article 15 (2) of the SCC's arbitration rules. Therefore, TNG is no longer entitled to reference the asserted disqualification.

It is incorrect that TNG became aware of the circumstances that TNG now maintains disqualifies Mr. B only after the conclusion of the arbitration. TNG was aware of Mr. B's involvement in the so-called Yukos dispute. Information on that dispute had been in the media. In the arbitration, TNG was assisted by a legal counsel within Rosneft, Ms. S, and TNG shall be deemed to have had her presumed knowledge.

TNG became member of the Rosneft group in March of 2013. At that point in time, TNG was obliged to investigate the alleged grounds for challenge. TNG must no later than in

March of 2013 have been aware of Mr. B's assignments. No later than 15 days thereafter should TNG have presented its objection on the disqualification of Mr. B. In the alternative, it is maintained that the grace period commenced on the first day of the main hearing of the arbitration on 1 July 2013, when, amongst others, Ms. S was present. An objection on the disqualification of Mr. B due to his information on the law firm's relationship to Rosneft should have been presented by 16 July 2013.

TNG has lost its right to reference the circumstances as grounds for the annulment of the arbitration award, since TNG without objections continued to participate in the arbitration proceedings and must through the statements made at the main hearing be deemed to have refrained from raising these objections.

TNG did not present any objections with respect to the disqualification of Mr. B until the application for a summons in the present case, which is too late.

4.2 The assertion that the arbitral tribunal was biased

Mr. B and the arbitral tribunal did not breach its obligation to remain impartial.

The requirement of remaining impartial does not mean that the arbitral tribunal must remain neutral with respect to the parties' positions when it formulates its grounds. In its grounds, the arbitral tribunal carried out a review of the merits which may not be subjected to court review and which cannot lead to the arbitral tribunal being considered biased. Moreover, the arbitral tribunal was not biased in its grounds.

The arbitral tribunal's statements in the arbitration award should be viewed against the background that the methods TNG used to fraudulently mislead its counterparty FNP, and to enrich itself, were illegal. The statement by the arbitral tribunal did thus not relate to TNG as such, but to the actions it had taken, which were criminal and undeserving of legal protection.

THE PARTIES' FURTHER DETAILS

In support of their respective cases, the parties have provided mainly as follows.

TNG

5. Excesses of mandate and procedural errors

5.1 The arbitral tribunal exceeded its mandate, or at least committed a procedural error, by considering circumstances which had not been referenced by the parties with respect to oil reserves

The implications of the Summary

The Summary was drafted at the arbitral tribunal's initiative. It provided the framing of the parties' respective cases in the arbitration. This is set out in paragraph 11.2 of the arbitration award. In the first version of the Summary of 12 June 2013, the parties made reservations by stating that the document would not preclude or exclude anything that the parties had referenced in their respective submissions. The arbitral tribunal did not accept this and informed that the grounds upon which the parties based their respective cases should be set out in full in the Summary. The parties again objected, but the chairman of the arbitral tribunal reminded the parties of the arbitral tribunal's decision through an e-mail and also referenced that the arbitral tribunal could issue a so-called cut off order with respect to the legal grounds, unless the parties complied with the arbitral tribunal's decision. The parties sent a joint letter and a new version of the Summary to the arbitral tribunal on 18 June 2013. In the letter, the parties again objected. This led to a telephone conference. In the chairman's notes from the telephone conference, it is stated that the parties had confirmed that the issues to be decided by the arbitral tribunal were set out in the Summary. Further, on the first day of the main hearing the chairman stressed that it was of utmost importance that it was perfectly clear which circumstances each party referenced. The final version of the Summary was completed on 5 July 2013, after the main hearing had been concluded. On 6 July 2013, the chairman of the arbitral tribunal sent an e-mail to the parties in which he clarified that the arbitral tribunal would base its decision on that which was set forth in the final version of the Summary and that the arbitral tribunal did not accept the parties' objections. Neither party objected thereto. The information set forth in the Summary is provided in Section 10 of the arbitration award.

All versions of the Summary provide that FNP maintained that TNG had provided misleading information on oil flow rates. It is only in paragraph 11.7 of the arbitration award that the term oil reserves is used in connection with the arbitral tribunal's account of the alleged breaches of contract. Oil flow rates and oil reserves are entirely separate

concepts and a clear distinction is made between them in the arbitration award, e.g. in paragraph 11.21.

What FNP maintained in the arbitration was that the oil flow rates were higher than what TNG had stated at the Paris meeting. In the arbitration award, p. 60-61, the arbitral tribunal reviewed what had been established concerning the information TNG provided at the Paris meeting. TNG admitted in the arbitration that TNG at the Paris meeting had clarified that i) the oil flow rates were lower than expected, ii) new geological data indicated the oil reserves to be lower than expected and iii) new geological data showed that the geological circumstances were more complicated than expected. In the arbitration, TNG maintained that this information was correct. TNG did not dispute that Mr. P had provided the information that the oil flow rates were "close to zero". Prior to the Paris meeting, TNG had access to the information that the production in the oil field according to updated figures for June of 2013 were a mere 1,561 tons. Against this background, Mr. P's information on the oil flow rates was correct.

In paragraph 11.22 of the arbitration award the arbitral tribunal referred to Mr. P's information on oil reserves. In paragraph 11.23 the arbitral tribunal concluded that Mr. P's information was "very substantially wrong". In paragraph 11.26, the arbitral tribunal reviewed Mr. P's knowledge about the oil reserves, even though it was never maintained in the arbitration that Mr. P had stated the oil reserves to be "close to zero". In paragraph 11.28 the arbitral tribunal reached the conclusion, which covers also oil reserves, that Mr. P's information was misleading and that Mr. P was aware thereof.

FNP's grounds for its case in the arbitration

There was information in the arbitration concerning oil reserves, but FNP never referenced anything with respect to oil reserves as grounds for its case, whether in the Summary or elsewhere in the procedural materials. This applies even if the arbitral tribunal would be deemed to not have been bound by the Summary. FNP did also not at the main hearing, in its closing submission or its post hearing brief reference that misleading information with respect to oil reserves had been provided.

The misleading at the Paris meeting that the arbitral tribunal inferred with respect to oil reserves was thus introduced to the arbitration by the arbitral tribunal, and TNG became

aware of this only when the arbitration award had been given. Thereby TNG was not awarded the opportunity to sufficiently argue its case.

Failure to rectify

Also with respect to TNG's alleged failure to rectify incorrect information, the arbitral tribunal referred only to oil reserves (arbitration award p. 73-74).

In the arbitration, FNP did not reference that TNG had provided misleading information with respect to oil reserves and had failed to rectify this information. As grounds for its case, FNP referenced that TNG had provided incorrect information on oil flow rates.

Summary

Thus, FNP's grounds in the arbitration were that TNG had provided misleading information with respect to the oil flow rates in the oil field and not that TNG had provided misleading information with respect to oil reserves. If the Court of Appeal would conclude that the issue of what should be deemed legally relevant circumstances and evidential circumstances, respectively, is relevant, then TNG disputes the assertion that the issue of which information should be considered misleading would constitute evidential circumstances. That information instead constitutes legally relevant circumstances.

5.2 The arbitral tribunal exceeded its mandate or committed a procedural error by considering circumstances which had not been referenced by the parties with respect to the registration of the concession

In its opening statement in the arbitration, FNP maintained that TNG had been granted the concession on 4 March 1993, and referenced this date in the concession document. FNP never mentioned the date 1 April 1994.

5.3 The arbitral tribunal exceeded its mandate by basing its decision with respect to the transferability of the concession on illegal case law, which had not been referenced

In the arbitration, TNG maintained that it was impossible under Russian law to transfer the concession to Tyumtex. TNG referenced that a new act on mineral deposits had

entered into force on 16 April 1992, which entailed that oil concessions could only be acquired through procurement procedures or auctions and that the arisen situation constituted force majeure under the parties' agreement. FNP objected against this by stating that there were no impediments under Russian law to transfer the concession and that the situation at any event did not constitute force majeure under the parties' agreement so as to release TNG from the obligation to transfer the concession.

The arbitral tribunal concluded that TNG had been able to transfer the concession for the oil field to Tyumtex, despite the new legislation. The arbitral tribunal stated that case law had developed in Russia under which, in practice, joint ventures with foreign investors could be granted concessions without procurement procedures. This had not been referenced by FNP.

5.4 The arbitral tribunal exceeded its mandate or committed a procedural error by not reviewing TNG's objection that correct information had been provided with respect to oil flow rates as well as by disregarding evidence thereon

The evidence referenced by TNG comprised a letter of 7 June 1993, according to which only 1,561 tons of oil had been extracted from the oil field during the first five months of 1993 as well as TNG's annual report for 1993, which established that the extraction for the entirety of 1993 amounted to 4,000 tons.

Paragraph 11.20 of the arbitration award shows that the arbitral tribunal skipped the review of whether Mr. P's information on oil flow rates at the Paris meeting was objectively correct. In paragraph 11.23, the arbitral tribunal instead reviewed whether the information on oil reserves was objectively correct, and concluded that this had not been the case. Hereafter, in paragraph 11.26, the arbitral tribunal referenced what had been known about the oil reserves in January of 1993, i.e. that they amounted to 33.6 million tons, and compared this figure to the information that it was "close to zero". According to the arbitral tribunal, in paragraph 11.27, TNG had not presented any evidence with respect to oil flow rates.

Thus, the arbitral tribunal did not evaluate TNG's evidence with respect to the above issue, and never reviewed whether the information with respect to the oil flow rates being "close to zero" was objectively correct.

5.5 The arbitral tribunal committed a procedural error with respect to the question of FNP's ability to provide financing

The evidence that TNG referenced to establish that FNP would have been unable to fulfill its obligations, and which the arbitral tribunal failed to consider, comprised a submission by Mr. G in another arbitration. The conclusions of the arbitral tribunal set forth in paragraph 11.126 with respect to FNP's ability to provide financing does not take into account the fact that the oil field yielded losses during the period 1992-2001.

5.6 The arbitral tribunal committed a procedural error and exceeded its mandate in connection with the issue of FNP's contribution of bonds

The bonds were so-called zero coupon bonds, with a maturity date of 1 April 2030. TNG was unaware of the bonds' maturity date.

5.7 The arbitral tribunal exceeded its mandate or at least committed a procedural error in its consideration of the statute of limitations issue

In its grounds, the arbitral tribunal states that all losses incurred by FNP (and which according to FNP's motion covers the period 1993-2011) and for a further period from 2012 until 2032 had been caused by the Paris breach. Therefore, the arbitral tribunal cannot have concluded that the liquidation breach, which occurred in 1999, alone was sufficient to award the full compensation.

If the arbitral tribunal had not exceeded its mandate or committed a procedural error it would have concluded that compensation for losses for the Paris breach was barred by statute of limitations. FNP did not move that the liquidation breach should be viewed separately, but instead against the backdrop of a specific scenario. If the arbitral tribunal had not exceeded its mandate or committed a procedural error, it would not have reviewed the liquidation breach. Further, the arbitral tribunal would not have been able to conclude that FNP had incurred the full amount of the loss if only the liquidation breach had occurred.

In paragraphs 11.83 and 11.84 of the arbitration award, the arbitral tribunal deals with TNG's objection based on statute of limitations, but the conclusions of the arbitral tribunal are unclear. It is evident from other sections of the arbitration award that the

arbitral tribunal did not conclude that the claim for compensation based on the Paris breach was barred by statute of limitations. In paragraph 11.76, the arbitral tribunal states that "the combined effect" of TNG's breaches of contract (the Paris breach, failure to rectify and the liquidation breach) had caused FNP's losses.

With respect to the Paris breach, FNP did not reference anything that would interrupt the period relevant for statute of limitations. Despite this, the arbitral tribunal concluded that the claim for compensation, which was based on the Paris breach, was not barred by statute of limitations through the conclusion that another breach of contract interrupted the period relevant for statute of limitations.

5.8 The requirement of effect on outcome

If the Court of Appeal would conclude that a requirement that an excess of mandate should have effects on the outcome is applicable, it should be applied in such a manner that the challenge shall not be granted only if it can be excluded that the outcome was affected.

In the present case, the arbitration award shall be annulled even if such a requirement applies. The liquidation breach did not constitute separate grounds for FNP's case, but was directly related to and dependent on the arbitral tribunal's conclusion with respect to the Paris breach. This is evident from the wording of FNP's grounds for liquidation breach. At the time of liquidation, Tyumtex was a shell company. The liquidation breach alone could not have caused FNP any losses. The arbitral tribunal reviewed the liquidation breach based on the hypothetical prerequisite that Tyumtex held the concession for the exploitation of the oil field. Since the Paris breach is irrelevant due to the arbitral tribunal's having exceeded its mandate, also the liquidation breach is rendered irrelevant.

6. The arbitral tribunal lacked jurisdiction due to a circumstance covered by Section 8 of the Swedish Arbitration Act

6.1 The arbitrator Mr. B was disqualified

TNG's parent company, Rosneft, directly owns 100% of TNG. TNG is a "key subsidiary" of Rosneft.

In October of 2012, it became public that Rosneft would acquire TNK-BP, which was then the owner of TNG. It was a huge transaction, which was reported in the press, and of which FNP must have been aware. Also Mr. B must at that time have been aware of Rosneft's acquisition of TNK-BP. The deal was completed on 21 March 2013. No later than at this point Mr. B ought to have acted, but only on the first day of the main hearing in July of 2013 did he provide any information with respect to Rosneft, namely that the merged law firm had assisted Rosneft. It must have been clear to Mr. B that Rosneft had interests in the arbitration between FNP and TNG. Nevertheless, he stated that he had not had any assignments against Rosneft.

Mr. B has, as far as currently known, had the following assignments for his clients within the Yukos group before US courts and in arbitrations.

1. Counsel, "Of Counsel" in submissions and present at hearings in Yukos' Chapter 11 proceedings (voluntary bankruptcy proceedings) in Houston during December of 2004 until March of 2005.
2. Counsel, "Of Counsel" in submissions and present at hearings on behalf of Yukos against Rosneft and its subsidiary Baikal in "adversary proceedings" in Houston (within the scope of the Chapter 11 proceedings) with respect to claims of USD 20 billion as well as injunctions, during December of 2004 until March of 2005.

One consequence of the Chapter 11 proceedings was that a mandatory "automatic stay", a form of property protection, entered into force. The property protection covered all of Yukos assets around the world. Hereby, Yukos attempted to prevent the planned auction of Yukos's subsidiary Yuganskneftegaz (YNG) (which was carried out as a result of Yukos not paying tax claims from the Russian Federation). The property protection was not recognized in Russia, and the auction was completed. Rosneft became the owner of the auctioned shares in YNG.

Mr. B's work with the above assignments was of substantial scope. His law firm was awarded fees in the proceedings in the amount of USD 2.6 million and for expenses in the amount of USD 430,000. The firm's invoice specification provides that Mr. B was the partner in charge and that he himself spent 496 hours on the bankruptcy proceedings alone. The invoice also provides that Mr. B's firm represented Yukos during the years 2001-2003.

3. Counsel, "Attorney-in-charge" and "Attorney" to Yukos in its request for arbitration submitted to a court in Houston in December of 2004.
4. Special counsel "Attorney" (*Pro Hac Vice*) to Yukos before the bankruptcy court in New York with respect to Yukos's bankruptcy in the Russian Federation during April of 2006 until June of 2006.

Rosneft and YNG (which was owned by Rosneft) were the only major creditors in the Russian bankruptcy proceedings. In a submission submitted by Mr. B, Yukos accused Rosneft of having unduly caused Yukos bankruptcy.

5. Lead counsel to Yukos in arbitration proceedings in London opened in September of 2004 and, as far as is known, these proceedings were still open in June of 2007.

The arbitration was at the time the biggest commercial arbitration in the world as regards the involved amounts, comprising claims exceeding USD 20 billion.

6. Counsel to Yukos Capital S.a.r.l. (Yukos Capital), a company in the Yukos group, in arbitration proceedings against Rosneft's indirect subsidiary Tomskneft in January of 2006.
7. Counsel to Yukos Capital in arbitration proceedings against Rosneft's indirect subsidiary Samaraneftegaz in January of 2006.

Yukos and Mr. B, as counsel to Yukos, has repeatedly aimed the following statements against Rosneft: that Rosneft unduly acquired shares in YNG, that Rosneft unduly had Yukos declared bankrupt in the Russian Federation, and that Rosneft unduly acquired two other Yukos subsidiaries in connection with the bankruptcy of Yukos.

Further, Mr. B has provided legal counsel to GML, Yukos's holding company. A Director of GML, Mr. O, has stated that a future buyer of YNG will endure "lifelong litigation". Also Mr. B supported this statement.

Mr. B had a leading role in the team which devised Yukos's strategy for litigations before various courts in various jurisdictions.

Further, Mr. B had contacts with other counsel representing Yukos and its holding company. Moreover, he assisted Yukos in other respects, such as ECHR, the Energy

Statute Treaty, jurisdiction for Swiss courts and European insolvency law. It is most likely that it is to these assignments for Yukos against, amongst other companies, Rosneft, Mr. B refers in his CV on Norton Rose's webpage when he states "Represented Russian Energy company in numerous arbitrations and court proceedings".

These circumstances entail that there are grounds for reasonable doubt as to Mr. B's impartiality. Moreover, they are of such nature and scope that they are not cured by the fact that approximately five years have passed.

In the arbitration, Mr. B incorrectly stated, amongst other things, the following. "I personally have had no work to do on any Rosneft file, either for or against Rosneft, […]." Thus, he not only failed to inform on these circumstances, but actively informed to the opposite (i.e. that he had not worked against Rosneft).

Rosneft had no knowledge of these circumstances, which thereby TNG could be deemed to have had. TNG does not maintain that Mr. B should be disqualified based on the information he provided during the first day of the main hearing. The presence of Ms. S during that day does not entail that any grace period commenced.

TNG became aware that Mr. B had assisted Rosneft only in January of 2014, and then commenced investigations. TNG disputes the statement that information on Mr. B's assignments were readily available and entirely public.

Circumstances more than three years in the past can, according to the IBA guidelines of 2014, constitute grounds for disqualification.

6.1 The arbitral tribunal was biased

Circumstances establishing that the arbitral tribunal was biased were particularly the following.

- The arbitral tribunal awarded an amount corresponding to SEK 1 billion in the absence of legally relevant circumstances or evidence in support of the claim.
- The arbitral tribunal's evaluation of evidence was without exception to TNG's disadvantage.

- The errors of the arbitral tribunal constituting grounds for challenge were the result of the continuous deviation from established legal methods. The errors committed by the arbitral tribunal can only be explained by it having refrained from a customary review of the parties' motions, references and evidence, for the purpose of disfavoring TNG.
- The arbitral tribunal has, *obiter dictum*, provided statements on TNG's "clandestine modus operandi".
- At the hearing of expert witness Prof. D, called by FNP, arbitrator Mr. B raised as a question the possibility of obtaining concessions for the exploitation of oil fields in deviation from applicable Russian law.
- The arbitral tribunal did not review whether the information on oil flow rates provided at the Paris meeting was objectively correct. The failure to do so, while nevertheless concluding that the information was misleading shows that the arbitral tribunal was biased.
- Although FNP did not assert any legally relevant circumstances with respect to which information on oil flow rates that was correct, or referenced any evidence thereon, the arbitral tribunal concluded that the information on negligible oil flow rates according to the parties' joint opinion was incorrect and had been provided for the purpose of misleading the counterparty.
- The arbitral tribunal based its conclusion that FNP could have procured the required financing on the fact that the oil reserves in the oil field were substantial during 1996-2000. A financing entity could not in 1993 have based its decision on financing on information about future production. The information that the oil reserves amounted to 26 million tons was uncovered at a much later stage and could not have served the basis for a decision on financing in 1993. The reasoning of the arbitral tribunal was made against better knowledge and shows the ambition to favor FNP on non-objective grounds.
- The arbitral tribunal placed the burden of proof on TNG with respect to the issue of FNP's ability to provide financing.
- The reasoning of the arbitral tribunal and the placement of the burden of proof with respect to the value of the bonds FNP had contributed lacks logic as well as legal relevance, and shows that the arbitral tribunal favored FNP on non-objective grounds.

- The arbitral tribunal's conclusions with respect to statute of limitations lacks support in applicable law and unduly favors FNP.

FNP

7. Alleged excesses of mandate and procedural errors

To the extent excesses of mandate are deemed to have occurred, they shall be treated as procedural errors, since the arbitration proceedings were of international nature. None of the alleged errors have affected the outcome, since the arbitral tribunal concluded that the liquidation breach had caused the entirety of FNP's loss. Moreover, each of the breaches of contract served as stand-alone grounds for FNP's case and they each individually entailed that FNP lost its investments and its opportunity to obtain its share of the profits from the oil field.

Prior to the Paris meeting, FNP received information that there was plenty of oil in the oil field and that the concession to exploit the field would be transferred to Tyumtex. FNP's case was that TNG at the Paris meeting provided misleading information on the transferability of the concession to exploit the oil field to Tyumtex and with respect to the oil in the oil field. Thus, the issue of misleading information with respect to oil reserves formed part of FNP's grounds in the arbitration.

7.1 The assertion that the arbitral tribunal exceeded its mandate or at least committed a procedural error by considering circumstances with respect to oil reserves

The scope of the arbitral tribunal's review was not determined by the Summary. The document did not have the importance now maintained by TNG. The Summary did not provide the framing of arbitration, but would serve as a guide for the arbitral tribunal. In the arbitration, the parties took the position that the arbitral tribunal should not disregard what had been elsewhere referenced by the parties. This was made clear to the arbitral tribunal through the parties' joint letter of 18 June 2013. This is also set out in paragraph 11.2 of the arbitration award, in which the reference to "these submissions" mean the Summary and the submissions of the parties.

TNG's claim that the parties merely referred to oil flow rates and not to oil reserves is incorrect. The interpretation of the Summary is an afterthought and not is not supported by the wording thereof. Moreover, it would not be in line with what FNP otherwise claimed throughout the arbitration proceedings. The arbitral tribunal clarified that it would not take into consideration that which the parties had maintained in submissions and elsewhere unless it was covered by the wording of the final version of the Summary.

TNG's assertion that TNG did not reference any evidence with respect to the oil reserves is entirely incorrect. TNG referenced evidence with respect to the oil reserves, orally through the witness Mr. P, and documentarily through an excerpt from the concession document for the exploitation of the oil field.

The estimated annual oil production depended on and was a function of the estimated total oil reserves. This is evident from, amongst other things, the fact that an adjustment to the estimated oil reserves led to an adjustment also of the oil flow rates. Moreover, TNG in the arbitration held the opinion that there was a connection between oil reserves and oil flow rates.

Further, the arbitral tribunal did not commit any procedural error by not highlighting to TNG that the Summary covered oil reserves.

Failure to rectify

FNP's case included that TNG provided misleading information also concerning the oil reserves. FNP's grounds with respect to failure to rectify covered all misleading information. FNP maintained that TNG committed a continuing breach of contract by not correcting the misleading information. In the arbitration, FNP referenced that the correct information must have been known to TNG not later than when TNG entered the subsequent agreement for the same oil field with a third party.

Possible errors did not affect the outcome

The arbitral tribunal concluded that TNG, through Mr. P, provided misleading information at the Paris meeting (with respect to oil flow rates and the concession). The breach of contract had thus been committed irrespective of the information on the oil reserves and TNG should have rectified the incorrect information. The arbitral tribunal

concluded that the Paris breach as such was barred by statute of limitations and thus could not serve as the basis for compensation to FNP. Instead, it was the liquidation breach that gave FNP the right to the awarded compensation. It was thus obvious that the alleged excesses of mandate did not affect the outcome of the arbitration.

7.2 The assertion that the arbitral tribunal exceeded its mandate or committed a procedural error by considering circumstances with respect to the registration of the concession which had not been referenced by the parties

The date 1 April 1994 had no relevance for the conclusions of the arbitral tribunal.

7.3 The allegation that the arbitral tribunal exceeded its mandate by basing its conclusion on the transferability of the concession on illegal case law, which had not been referenced by the parties

The issue of the possibility for Tyumtex to obtain the concession without a public auction (which TNG asserted was the only possibility under law) was brought up by FNP's representative Mr. G, during cross-examination from TNG's counsel. Then, Mr. G stated that other joint venture companies had obtained concessions without an auction. The following day, during the hearing of FNP's expert witness Prof. D, he confirmed the contents of his written witness statement that concessions could be obtained without an auction. The issue was also discussed following questions from the arbitral tribunal. Finally, TNG's expert witness, Prof. M, during cross-examination confirmed that it would have been possible for the joint venture company to obtain the concession without an auction. The conclusions of the arbitral tribunal were based on the evidence in the arbitration and not on any biased attitude.

7.4 The assertion that the arbitral tribunal exceeded its mandate or committed a procedural error by not reviewing TNG's objection that correct information was provided with respect to oil flow rates and by disregarding evidence with respect to the same

The assertion that the arbitral tribunal would have been unable to draw any other conclusion than that Mr. P believed the information he provided on oil flow rates was correct, is incorrect. The arbitral tribunal attached limited value to TNG's evidence.

There is nothing to indicate that the arbitral tribunal in its evaluation of the size of the oil flow rates or in its evaluation of evidence would have disregarded evidence referenced by TNG. In the arbitration award, the arbitral tribunal has stated that "no new geological data have been referenced as evidence" and that "there is no other reliable evidence". There was also other evidence which established that Mr. P had provided incorrect information. Thus, the arbitral tribunal would in any event have concluded that Mr. P lied about the amount of oil in the oil field.

If the arbitral tribunal's conclusions on the size of the oil flow rates led to evidence referenced by TNG not having importance or being of limited value, this constitutes an issue of evaluation of evidence and does not constitute grounds for challenge.

7.5 The assertion that the arbitral tribunal committed a procedural error in connection with the question of FNP's ability to provide financing

Some of the evidence referenced in the arbitration with respect to FNP's ability to provide financing was referenced by both parties.

TNG's evidence was not relevant, since it concerned what had actually happened after the breach of contract and not, which was for the arbitral tribunal to decide, FNP's financial position without the breach of contract having occurred.

The arbitral tribunal concluded that TNG had failed to establish its objection against the breaches of contract and the causality that FNP would have been unable to provide financing. The conclusions of the arbitral tribunal were correct and constitute reviews of the merits of the case, and are as such not subject to challenge.

7.6 The assertion that the arbitral tribunal committed a procedural error and exceeded its mandate in connection with the issue of FNP's contribution of bonds

The arbitral tribunal did not base its decision on any circumstance which had not been referenced by FNP. In any event, the matter should not be assessed under the provision on excesses of mandate, but rather under the provision on procedural errors.

As grounds for its disputing the motion, FNP referenced that it had not misled TNG with respect to the value of the bonds. FNP's grounds for disputing mirrored TNG's assertion

that FNP had misled TNG. Therefore, the arbitral tribunal did not commit a procedural error or exceed its mandate.

7.7 The allegation that the arbitral tribunal exceeded its mandate or committed a procedural error in its dealings with the issue of statute of limitations

The arbitral tribunal concluded that the Paris breach was barred by statute of limitations and that the liquidation breach alone had caused the entirety of FNP's loss.

7.7 [*sic!*] The requirement of effect

The liquidation breach did not depend on the arbitral tribunal's conclusions with respect to the Paris breach.

8. The allegation that the arbitral tribunal lacked jurisdiction due to a circumstance covered by Section 8 of the Swedish Arbitration Act

8.1 The allegation that arbitrator Mr. B was disqualified

Mr. B had no remaining loyalty towards Yukos which entailed that he should be deemed to have been partial during the arbitration. The circumstances to which TNG refers do not call into question Mr. B's impartiality. As regards the assignments numbered 1-7, number 1 and 2 are the same bankruptcy related assignment which was closed during 2005. In assignment numbers 3-5, Rosneft was not the counterparty. Moreover, for assignment number 5 TNG no longer maintains that Rosneft was the counterparty. Further, Rosneft was not the counterparty in assignments number 6 and 7. Tomskneft and Samaraneftegaz were subsidiaries of Yukos. Mr. B was not involved in the matters during 2001-2003. Those matters did not involve Rosneft. FNP disputes that Mr. B had any obligation to inform.

TNG became a subsidiary of Rosneft only in 2013, i.e. more than seven years after the circumstances occurred which TNG now alleges call Mr. B's impartiality into question. In connection with Rosneft's acquisition, TNG received information on Mr. B's assignments and in any event in connection with the commencement of the main hearing in the arbitration. At the main hearing, two in-house legal counsel from Rosneft participated; Ms. S and Mr. E. In addition, Mr. B is a very well-known arbitrator within

the oil and gas industry. It was easy to obtain information about him and his assignments, e.g. by using Google search. It was for TNG to investigate possible circumstances which could provide grounds for disqualification that could arise in connection with Rosneft's acquisition.

Further, it should be noted that Mr. B did not act as legal counsel against TNG, that TNG became a member of the Rosneft group towards the end of the arbitration proceedings, and that the company at any event is a distant subsidiary of Rosneft, far down in the organizational structure.

Mr. B's involvement as counsel against the Russian Federation is not grounds for disqualification. With reference to the same circumstances that prevent grounds for disqualification with respect to Rosneft, grounds for disqualification are not at hand with respect to the Russian Federation. The review of the grounds for disqualification due to previous assignments should not be done with application of the same strict requirements as is otherwise appropriate, particularly taking into account the substantial and broad scope of the activities of a nation.

Mr. B did not support or participate in the making of the statement about "lifelong litigation". He had no client relationship with Yukos's holding company or the Director that made the statement. Irrespective hereof, the alleged circumstances do not give grounds to disqualify Mr. B as arbitrator in the arbitration proceedings.

When FNP requested arbitration in December of 2011, Mr. B was a partner of an international law firm. Following a review of conflict of interests, Mr. B informed that the firm was involved in a number of assignments on behalf of BP, but that he himself was not involved in these. At the end of 2012, it was made public that the law firm at which Mr. B was a partner would be merged with another law firm. Mr. B informed the parties and added that the merger, as far as he gathered, did not affect his ability to remain as impartial and independent arbitrator in the dispute. Mr. B requested the parties to submit their opinions if they differed, but the parties did not do so. A few days prior to the commencement of the main hearing on 1 July 2013, the parties submitted drafts of their respective opening statements. In connection therewith, Mr. B noted that Rosneft had acquired TNK-BP, and that TNG thereby had become member of the Rosneft group. Upon a review of conflict of interests, Mr. B noted that the merged law firm was involved

in several ongoing assignments for Rosneft. Mr. B statement concerned the ongoing Rosneft assignments in which the merged law firm was involved, and which he had discovered upon a renewed review of conflict of interests.

An overall assessment of Mr. B's actions must be made. The fact that he did not inform on the previous assignment for Yukos is not a circumstance which give grounds to call his impartiality into question.

8.2 The assertion that the arbitral tribunal was biased

The arbitration award was not based on unreferenced legally relevant circumstances, but rather on evidence with respect to the oil reserves. The arbitral tribunal concluded that FNP had established several breaches of contract committed by TNG. This involved more than oral information. Both FNP and TNG referenced circumstances and evidence with respect to the Paris meeting.

The arbitral tribunal was not biased and did not incorrectly evaluate the evidence. The conclusion of the arbitral tribunal was the result of how the parties argued their respective cases and the referenced evidence. The conclusion of the arbitral tribunal relates to the merits of the case, and is not subject to challenge. The arbitral tribunal did not deviate from customary legal methods and did not exceed its mandate or commit procedural errors.

THE INVESTIGATION BEFORE THE COURT OF APPEAL

Upon TNG's request, the witness Ms. S has been heard. Upon FNP's request, the witness Mr. L has been heard.

Both parties have referenced documentary evidence.

GROUNDS OF THE COURT OF APPEAL

Introduction

First, the Court of Appeal will decide the issue whether the arbitral tribunal, as maintained by TNG, exceeded its mandate by considering circumstances which had not been referenced by FNP with respect to the misleading information from TNG on oil

reserves. When deciding this issue, as well as other alleged excesses of mandate, the legal starting points are the following.

The first paragraph of Section 34 of the Swedish Arbitration Act provides that an arbitration award following challenge shall be wholly or partially annulled if the arbitrators exceeded their mandate (item 2).

The prime example of excesses of mandate is when the arbitrators have decided on a motion which was not presented or based its decision on a circumstance which was not referenced in the arbitration.

For arbitrations between Swedish parties, the provisions and terms of the Swedish Code of Judicial Procedure are deemed to govern the assessment whether the arbitrators exceeded their mandate by considering circumstances, which had not been referenced (see Government Bill 1999:35 p. 145-146 and Heuman, Skiljemannarätt, 1999, p. 337 f., and p. 618). This means that the mandate of the arbitrators is limited by the legally relevant circumstances referenced by the claimant in the arbitration. For arbitration involving foreign parties, it is not certain that the provisions and terms of the Swedish Code of Judicial Procedure apply in this respect. In Government Bill 1998/99:35 p. 147, it is stated that greater caution is required in international disputes and that for such disputes it should not be expected that the Swedish terminology is binding. In that context, it is further stated, in reference to a statement by the Legal Council (*Swe: Lagrådet*), that if the arbitrators have neglected something it might be more appropriate to consider it as a procedural error. Finally, it is also stated that in any event it cannot be permitted that the arbitrators would decide on grounds or objections which have not at all been raised during the arbitration.

Questions of excesses of mandate are moreover closely connected to the arbitrators' guidance of the proceedings. There is no provision hereon in the Swedish Arbitration Act. The preparatory works provide general statements to the effect that the arbitrators' guidance of the proceedings may vary due to the involved parties and the nature of the dispute, and that this is ultimately decided by the parties, i.e. the assignment the parties have given to the arbitrators (Government Bill 1998/99:35 p. 120-122).

Initially, the Court of Appeal concludes the following with respect to the importance of the provisions of the Swedish Code of Judicial Procedure for the review of whether the arbitrators exceeded their mandate. The challenged arbitration award involve a Russian and a US company. The arbitration took place in Stockholm, and according to the parties' agreement Swedish law applied to the dispute. One Russian and one US arbitrator were members of the arbitral tribunal. The chairman of the arbitral tribunal was a Swedish *advokat*, and the parties were represented by Swedish legal counsel.

Against the background of the strong ties to Sweden, the parties as well as the arbitral tribunal must have been well aware of and have adapted to the provisions of Swedish procedural law with respect to issues of, amongst other things, the importance of clearly referencing legally relevant circumstances.

The importance of the Summary

The Summary was produced upon the initiative of the arbitral tribunal, but was drafted by the parties. Below, the Court of Appeal will refer to the final version of 5 July 2013, as the Summary.

In the challenge proceedings the parties have differing opinions on the function of the Summary in the arbitration. TNG has maintained that the arbitral tribunal according to its assignment was to try only the circumstances set forth in the Summary, whereas FNP has maintained that the Summary did not limit the scope of the arbitral tribunal's assignment and that the arbitral tribunal was thus not bound by the Summary, but that it should also consider that, which the parties had maintained also in its submissions in the arbitration.

In the first version of the summary, the parties objected by providing the following in the introduction.

> "This summary does not exclude or replace any legal grounds, arguments or circumstances contained in the parties' previous submissions. This summary is provided pursuant to the Tribunal's order and for its convenience."

The arbitral tribunal did not accept the reservation. The chairman of the arbitral tribunal made this clear to the parties in his e-mail of 13 June 2013. The e-mail provides as follows.

> "The Tribunal notes that the Joint summary contains a reservation in that the parties refer to their previous pleadings declaring that what is contained in the Joint Summary does not fully reflect the legal grounds relied on. The Tribunal requires to be perfectly clear on what grounds are relied at this stage. Each of the parties is therefore ordered to submit a specified account of such legal grounds and legal theories on which they rely and which are not set out in the Joint Summary. It is specifically pointed out that general references to previous pleadings will not suffice."

In a letter to the arbitral tribunal of 14 June 2013, TNG wrote the following.

> "All of TNG's objections raised and positions taken, respectively, in relation to the substantive matters referred to this arbitration remain unaffected."

The arbitral tribunal did not accept this either, and the chairman in his response on the same day referred to what had already been clarified, and declared that general references to that which the parties had previously maintained were insufficient. The chairman reminded about the possibility to issue a "cut off order as to legal grounds", unless the parties no later than on 19 June 2013 provided a complete account of possible additional grounds.

Hereafter, the parties on 18 June 2013 in a joint letter to the arbitral tribunal stated that the term "legal grounds" included all relevant factual circumstances upon which a party relied, and that a "Summary of legal grounds" in the parties' opinion would serve no other purpose than as a practical guide for the arbitral tribunal. The parties also stressed that they could not accept that a Summary of legal grounds would have precluding effects with respect to the submissions in the arbitration.

Thereafter, the chairman held a telephone conference with the parties' legal counsel on 24 June 2013. In the notes from the conference sent to the parties via e-mail on the following day, the chairman wrote that the parties had confirmed that the issues the parties wished the arbitral tribunal to resolve were those set forth in the summary of 19 June 2013.

1 July 2013 was the first day of the main hearing in the arbitration. Then, the chairman clarified that the arbitral tribunal must be "perfectly clear" over what it should decide,

and that the arbitral tribunal did not want vague references to other arguments than those set forth in the summary.

On 5 July 2013, the parties submitted the Summary to the arbitral tribunal. This did not contain any reservation or reference to the parties' previous submissions. On 6 July 2013 the chairman sent an e-mail to the parties. The third paragraph of the e-mail reads as follows.

> "In considering the issues in this case the Tribunal will base its decision on the assumption that the parties rely on the legal grounds as they have now been set out in the 5 July version. The Tribunal will assume that this reflects the final positions of the parties in this respect. It follows that the references to prior pleadings will not be considered. The Tribunal has noted the letter of the parties dated 18 June 2013 in that regard. For the sake of clarity the Tribunal wishes to point out that ensuring absolute clarity on the legal grounds is a fundamental duty of the Tribunal and that this duty applies irrespective of the position taken in that regard by the parties. As counsel will be fully aware failure by the Tribunal to ensure this may lead to a ground for challenging the award. Hence, in accordance with the Tribunal's overriding duty to deliver a valid award, references in the final statement of the legal grounds/arguments to what may have been said in other pleadings will not be considered unless this has been covered in the final formulation thereof".

Thus, the e-mail provided that the arbitral tribunal in its decision would assume that the parties referenced the grounds set forth in the Summary and that a consequence would be that references to previous submissions would not be taken into account. In the e-mail, the chairman further clarified that it was the arbitral tribunal's task to ensure that it was perfectly clear which grounds that were referenced, irrespective of the parties' opinion in this respect. Finally, he stressed that references to what the parties had maintained elsewhere in the arbitration would not be taken into account, unless it was covered by the wording of the Summary. It has not been established that any of the parties objected to the content of the e-mail of 6 July 2013. Moreover, there are no objections set forth in the parties' respective post hearing briefs, i.e. in the submissions submitted thereafter.

The Summary was set out in its entirety in the arbitration award, p. 41-57, Section 10. In the introduction to this Section, the arbitral tribunal stated the following.

> "10.1 As finally formulated the parties rely on the legal grounds set out below. The grounds have been formulated by the parties after consultation and thereafter communicated to the Tribunal in a joint submission dated 5 July 2013. With minor redactions by the Tribunal (for linguistical and terminological consistency) these grounds are set out as follows."

In his witness statement, Mr. L has stressed that it was indeed essential for the arbitral tribunal to obtain clarity with respect to what the parties referenced, but that the parties did not wish to be limited by the Summary. He has further stated that the arbitral tribunal attempted avoid the parties' reservations, but that the arbitral tribunal failed in this respect. He has explained that the reason for the Summary to have been included in the arbitration award was to set forth in writing the grounds upon which the parties' respective cases were based, and that the arbitral tribunal did not wish to decide on anything else, which, in his opinion, it did not.

Thus, Mr. L has lessened the importance of the Summary and indicated that the arbitral tribunal failed in its guidance of the proceedings. However, this does not coincide with the wording of the arbitration award, and with what transpired between the chairman and the parties concerning the issue of the Summary prior to and during the main hearing of the arbitration. According to the Court of Appeal, it is clear that the arbitral tribunal guided the proceedings in order to clarify what each party referenced and when the parties objected, persisted in that the Summary should recount the circumstances relevant for each party's respective case. It is also clear that the parties ultimately accepted this. Thus, the situation is no different than when the arbitral tribunal has produced draft recitals which is submitted for the parties' review. Recitals approved by the parties have been deemed to reflect the parties' respective cases in all material aspects (see Svea Court of Appeal's judgments of 1 December 2009 in case T 4548-08 and of 4 December 2014 in case T 2610-13).

Against the above background, the Court of Appeal concludes that the it has been established, by the arbitration award and the relevant documentary evidence, that the arbitral tribunal intended to frame its review and its assignment through the Summary. It is also established that the parties ultimately – following the chairman having persisted in the tribunal's opinion despite the objections of the parties – accepted that their grounds

should be set forth in the Summary and that consequently the mandate of the arbitral tribunal was limited thereby.

Thus, the Court of Appeal's conclusion is that the Summary provided the framing for the arbitral tribunal's mandate and that the review would not involve any other grounds – legally relevant circumstances – than those set forth therein.

Upon this conclusion, FNP has maintained that the circumstances covered by the wording in the Summary can only be found in the other procedural materials and that the submissions then serve as interpretation data for the Summary. According to FNP, FNP in the arbitration referenced misleading information about the oil in the oil field, which also covered oil reserves, and in other respects referenced oil reserves as well as presented evidence in this respect. TNG has disputed this.

TNG has maintained that the term oil flow rates covers actual or expected production of oil to be achieved for a certain specified time period, whereas the term oil reserves relates to the estimated amount of oil in an oil field. TNG has referenced an opinion from Prof. A. The opinion provides that the term oil flow rates and oil reserves do not cover the same issues, the terms do not overlap and oil flow rates are not necessarily a function of the size of the oil reserves.

FNP has attested that oil flow rates and oil reserves could be used for separate phenomena. However, FNP has maintained that this distinction was not made in the arbitration and that the circumstances covered by the wording of the Summary can only be found in other procedural materials, and that the submissions then served as interpretation data to the Summary.

However, according to the Court of Appeal, it has not been established by the details provided by FNP in the arbitration that what FNP meant with respect to oil flow rates in the Summary covered all oil in the oil field, and thus also the oil reserves. It is further evident from the arbitration award, particularly paragraphs 11.20 and 11.21, that the arbitral tribunal distinguished between the terms oil flow rates and oil reserves ("flow rates and reserves"). Also this indicates that the term oil flow rates of the Summary did not cover all oil in the oil field, and thus not the oil reserves.

Therefore, the conclusion of the Court of Appeal is that the Summary should not be interpreted in any other manner than in accordance with its wording, i.e. that the misleading statements at the Paris meeting referenced by FNP related to information on oil flow rates, which covered neither all the oil in the oil field nor oil reserves.

The question whether the arbitral tribunal has considered a circumstance not referenced by FNP and, if so, whether this constitutes a new legally relevant circumstance

Introduction

Thus, the Court of Appeal has concluded that the framing of the arbitral tribunal's mandate was determined by the Summary and that the misleading statements at the Paris meeting referenced by FNP related to oil flow rates specifically. The next question for the Court of Appeal to decide is therefore if the arbitral tribunal – as maintained by TNG – based its decision on oil reserves and if so, whether this should legally be qualified as new grounds – i.e. legally relevant circumstance – added by the arbitral tribunal.

The Summary was finalized after the main hearing before the arbitral tribunal had been held and has been recounted in the arbitration award. The Summary sets forth the breaches of contract maintained by FNP under four separate headings. The same headings are used in the arbitration award. Under each such heading, the respective positions of FNP and TNG are set out.

The section "TNG's information" initially sets out FNP's assertions with respect to the information TNG, according to FNP, had provided at the Paris meeting. The section has the following wording (paragraphs 10.17 and 10.18 of the arbitration award).

> "At the Paris meeting TNG provided FNP with information concerning (i) the oil flow rates of the Oil Field, (ii) concerning TNG's unsuccessful efforts to provide the JV with the Oil Field Rights and (iii) with respect to certain regulatory changes in Russia making it impossible to provide the JV with the Oil Field Rights. This information was inconsistent with what TNG up until the Paris Meeting had conveyed to FNP. Based on this information, FNP decided to accept TNG's offer to reimburse FNP for its investments made and thereafter to release its share in the Oil Field to TNG.

> The information provided by TNG was however misleading since, (i) the oil flow rates were higher than accounted for, (ii) no efforts were made by TNG to provide the JV with the Oil Field Rights and (iii) it was indeed possible to provide the JV with the oil field rights."

The assessment of what constitutes legally relevant circumstances

First, the Court of Appeal will decide what constitutes legally relevant circumstances in the Summary. In the context, it should be noted that legally relevant circumstances are such circumstances as are directly relevant for the application of a legal provision. Abstract legally relevant circumstances form part of a legal provision, i.e. prerequisites. A prerequisite can, in its turn, be broken down into constituent parts. A concrete legally relevant circumstance is a factual situation of reality upon which a party bases its case and that is directly relevant for the legal consequence a party has connected to the referenced factual situation. Also concrete legally relevant circumstances can be broken down into constituent parts. Concrete legally relevant circumstances can be established through evidential circumstances and circumstantial facts related thereto. (See, for example, Fitger *et al*., Rättegångsbalken, the commentary to Chapter 17, Section 3, Zeteo, version October 2014).

In the arbitration, FNP maintained that TNG had intentionally provided FNP with misleading information, i.e. that TNG had breached the contract. The concrete legally relevant circumstances, which should be established, was what information that had been provided and in what respects that information did not correspond to the actual situation. FNP also maintained that the breach of contract had been committed intentionally or grossly negligently (paragraph 11.20 of the arbitration award). That, which is set forth in the Summary constitutes, in the Court of Appeal's opinion, the concrete legally relevant circumstances referenced by the parties in the arbitration with respect to the breaches of contract FNP alleged that TNG had committed and for which TNG should be held liable.

Thus, the Court of Appeal disagrees with FNP that the legally relevant circumstances referenced by FNP merely were that TNG had misled FNP to undertake certain actions at the Paris meeting by providing FNP with incorrect information. These are mainly abstract legally relevant circumstances that cannot, as such, lead to any success without it having been made clear what actual information was provided and the manner in which this

constituted a fraudulent misleading statement. It is clear from the above quoted paragraphs from the Summary that FNP maintained that TNG at the Paris meeting had provided information with respect to "the oil flow rates of the Oil Field" and that the information TNG according to FNP provided was misleading since the oil flow rates were higher than informed.

Therefore, the conclusion of the Court of Appeal with respect to misleading information concerning the oil in the oil field, is that the concrete legally relevant circumstances referenced by FNP according to the Summary were that TNG had at the Paris meeting provided information on oil flow rates, that the information did not correspond to the information TNG had provided prior to the Paris meeting and that the information was misleading because the oil flow rates were higher than informed.

The review of the arbitral tribunal

In the arbitration award, the arbitral tribunal begins its review of what FNP had maintained with respect to breaches of contract on p. 58, paragraph 11.7. At the top of p. 59 at (i), the arbitral tribunal states that FNP maintained that TNG had provided misleading information at the Paris meeting concerning the production and estimated oil reserves at the oil field ("as to production and the probable oil reserves in the KOF") and at (ii) that TNG had failed to provide correct information on production and reserves ("failure to provide correct information as to production and reserves"). The Court of Appeal notes that the account of the arbitral tribunal of the alleged breaches of contract deviate from the wording of the Summary. The Summary does not state that FNP maintains that TNG at the Paris meeting provided information on *oil reserves*; the Summary merely provides that FNP maintains that TNG provided information on *oil flow rates*.

Hereafter, the arbitral tribunal reviewed the Paris breach. In paragraph 11.14, the arbitral tribunal determines that what FNP maintained was that the information on the extraction of oil from the oil field provided at the Paris meeting was that the flow rates were close to zero ("the information about the extraction of oil at the KOF given at the Paris Meeting was that the flow rates were close to nil"). In paragraph 11.16, the arbitral tribunal notes that what was actually said at the Paris meeting was somewhat uncertain, but that TNG had agreed that the information related to the flows being lower than expected ("lower

than anticipated flow rates"). The arbitral tribunal further notes that information had been provided with respect to new geological surveys indicating lower than expected reserves ("the available reserves were lower than expected") and concerning the fact that the geological circumstances at the oil field were more complicated than previously anticipated. The Court of Appeal notes that the arbitral tribunal distinguishes between flow rates and reserves, but also continues to discuss oil reserves.

Hereafter, the arbitral tribunal provides its conclusions. In paragraph 11.20, the arbitral tribunal declares that it is tasked with determining which information that TNG actually provided with respect to oil flow rates and oil reserves ("the flow rates and reserves") and whether this information was correct in the sense that Mr. P and TNG actually believed that the information provided was correct. The arbitral tribunal thereafter reverts in paragraph 11.21 to what had been established with respect to the information provided at the Paris meeting concerning flow rates and reserves and concludes that this was not set forth in the minutes from the meeting, but that they do provide that Mr. P informed on new geological updates from test drilling and the "testing of wells". The arbitral tribunal concludes that the information must have been negative and refers to the witness Mr. G, who provided in his statement that the flow rates ("the flow", "the debits") were close to zero ("practically zero" or "close to zero"). The arbitral tribunal also refers to a letter written by Mr. G in 1996, which referenced Mr. P's information at the Paris meeting concerning flow rates close to zero ("the flow rates were nearly zero"). That the information concerning oil flow rates and, according to Mr. P's witness statement, concerning oil reserves ("as to reserves") was of that nature coincides, according to the arbitral tribunal, with the fact that the parties at the Paris meeting agreed to not continue the exploitation of the oil field. The arbitral tribunal also concludes that if it could have been anticipated that the flow rates were low but the oil reserves substantial ("recent flow rates were very low, almost nil, but that the reserves in the ground were nevertheless plentiful") it was nevertheless unlikely that the parties would have reached such a decision. Therefore, it was clear to the arbitral tribunal ("clear to the Tribunal") that the information provided by Mr. P must have covered flow rates as well as estimated reserves ("both flow rates and the estimated reserves") and that the information meant that there were no such quantities of oil ("no quantities of oil") that it made sense to carry on the exploitation. Thus, the arbitral tribunal again mentions flow rates and reserves as

separate things, and adds the word *reserves* despite FNP not having referenced any misleading with respect to the size of the reserves in the Summary.

In paragraph 11.22, the arbitral tribunal establishes that it was Mr. P's statements on flow rates and new geological data on reserves that were the key reason for the decision to not complete the project. Hereafter, the arbitral tribunal notes in paragraph 11.23 that information on reserves was objectively very substantially incorrect ("very substantially wrong"), since, in light of later events, it was clear that there were substantial reserves in the oil field ("the available reserves at the KOF were very substantial indeed"). According to the arbitral tribunal, the question was thus whether TNG and its representatives at the Paris meeting believed that the image they provided at the Paris meeting was correct or if they had intentionally provided incorrect information. Hereafter, the arbitral tribunal in paragraph 11.25 refers to, among other things, the information with respect to "reserves", which as per 1 January 1993 were estimated to 33.6 million tons. In paragraph 11.26, the arbitral tribunal refers to the number 33.6 million tons, which according to the arbitral tribunal was a substantial asset very far from "close to zero" as provided by Mr. P in Paris ("the revised reserves as at 1 January 1993 on TNG's books, 33.6 million tons, were still a considerable asset and very far from the 'close to zero' indication given by Mr. P at the Paris Meeting"). The arbitral tribunal also refers to the fact that the number 33.6 million tons was included in the concession registered on 1 April 1994. If TNG had discovered already in the spring of 1993 that there was very little oil, this was, according to the arbitral tribunal, hard to reconcile with the fact that the authorities one year later had not received any information from TNG that the number 33.6 million tons was entirely inaccurate and that the actual number concerning the reserves was "close to zero". Thus, throughout this section, the arbitral tribunal reviews the size of the reserves, despite that FNP according to the Summary had not referenced any misleading with respect to the size of the reserves.

The arbitral tribunal further notes in paragraph 11.27 that TNG had failed to establish the claim that there were new geological data in relation to what had been known in January of 1993, and that the arbitral tribunal thus had to base its further assessments on the assumption that there was no new data with respect to "flow rates and reserves".

The arbitral tribunal's conclusion is that (paragraph 11.28 of the arbitration award) it is convinced that the information on flow rates and estimated reserves provided by Mr. P orally at the Paris meeting was materially misleading and that he as well as TNG was aware thereof ("the Tribunal is persuaded that the flow rate information and reserve estimates orally given by Mr. P at the Paris meeting were substantially misleading and that Mr. P and TNG were aware of that.").

As set out above, the Summary does not provide that FNP maintained that TNG had provided any information on oil reserves and also not that TNG had provided any misleading information with respect to oil reserves. Despite this, the arbitral tribunal has concluded that the concrete information on "close to zero" covered flow rates as well as reserves. The arbitral tribunal reviewed TNG's knowledge of the inaccuracy of the information by comparing the estimated size of oil reserves in January of 1993, 33.6 million tons, to the statement "close to zero". The grounds of the arbitral tribunal provide that it distinguished between flow rates and reserves, e.g. in paragraphs 11.16, 11.20 and 11.21. It is also clear that the arbitral tribunal attributed substantial importance to information with respect to oil reserves, particularly in paragraph 11.23, in which the arbitral tribunal noted that the information about the reserves was "very substantially wrong". According to the Court of Appeal it is hereby clear that the arbitral tribunal has added and considered circumstances which FNP had not referenced, i.e. that information had been provided with respect to reserves and that this information was misleading. These circumstances, by themselves or together with actually referenced circumstances on flow rates, have the legal consequence that they could entail liability for breach of contract. The circumstances added by the arbitral tribunal thus constitute legally relevant circumstances. These legally relevant circumstances are not set out in the Summary. By adding these legally relevant circumstances to its review, the arbitral tribunal exceeded its mandate.

Summary

Thus, the arbitral tribunal has considered factual circumstances which FNP had not referenced as constituting breach of contract, i.e. that TNG had provided information with respect to oil reserves and that the information was misleading. The circumstances were of such nature that they could lead to liability for losses due to breach of contract.

Thus, they constituted legally relevant circumstances not referenced by FNP. The conclusion of the Court of Appeal is therefore that the arbitral tribunal exceeded its mandate.

Effect on the outcome of the arbitration

Introduction

The next question for the Court of Appeal to decide is if it is also required that the established excess of mandate affected the outcome of the arbitration.

The first paragraph of Section 34 of the Swedish Arbitration Act provides that an arbitration award shall be wholly or partially annulled if, among other things, the arbitral tribunal exceeded its mandate. As opposed to the provision of the Act that deals with procedural errors (item 6 of the first paragraph of Section 34), the provision on excesses of mandate (item 2 of the first paragraph of Section 34) does not provide a requirement that the error likely affected the outcome.

The issue has been discussed in jurisprudence, see, amongst others, Heuman, Skiljemannarätt, 1999, p. 609 f. In sum, Heuman states the following. That the arbitration award shall be wholly or partially annulled constitutes an implicit causality requirement in cases where the mandate has been exceeded. This means that the operative part of the award shall be annulled only to the extent it was given as a result of the excess of mandate. However, this only applies if the error is directly reflected in the operative part of the award. In some cases it is not possible to distinguish the operative part of the award, and identify the part that is the result of the mandate having been exceeded. Then, it is not possible for the court to, based on a requirement of causality, annul the arbitration award partially. In cases where it is theoretically possible to distinguish between issues where the arbitral tribunal lacked the mandate to decide and issues falling within the scope of the mandate, the issues could nevertheless be intertwined in such a manner so as to render it impossible or inappropriate in practice to allow the arbitration award to remain partially valid. Then, the court must annul the arbitration award in its entirety. (Cf. Lindskog, Skiljeförfarande, 2012, p. 876 f.).

Previous judgments by Courts of Appeal provide that annulment shall not occur if it is possible in advance to establish that the outcome would not have been different even if

the mandate had not been exceeded (see e.g. Svea Court of Appeal's judgment of 1 December 2009 in case T 4548-08). In that case, the Court of Appeal concluded that it was not possible to establish the outcome of the review with certainty. According to the Court of Appeal it could at least not be excluded that the error had affected the outcome. The arbitration award was annulled.

According to the Court of Appeal, the following can be concluded as to the legal situation. The wording of the Act provides that an arbitration award shall be annulled wholly or partially if, amongst other things, the arbitral tribunal exceeded its mandate. A partial annulment of an arbitration award requires that it is possible to distinguish what parts of the operative part of the award that is the result of the mandate having been exceeded. If the excess of mandate did not any way affect the operative part of the award, the arbitration award shall not be annulled.

The importance of the fact that the arbitral tribunal concluded that TNG had provided misleading information on flow rates and the transferability of the concession

FNP has maintained that any excess of mandate with respect to oil reserves did not have any effect on the outcome of the case, since the arbitral tribunal, irrespective of the assessment of the misleading with respect to oil reserves, concluded that TNG at the Paris meeting had provided misleading information on flow rates and on the transferability of the concession to exploit the oil field to Tyumtex.

As set out above, the arbitral tribunal has reviewed the issues of the information on flow rates and reserves in one context. This is clearly evident from paragraph 11.28 of the arbitration award, according to which the arbitral tribunal had been persuaded that the information on flow rates and estimated reserves given by Mr. P at the Paris meeting was substantially misleading ("the Tribunal is persuaded that the flow rate information and reserve estimates orally given by Mr. [P] at the Paris Meeting were substantially misleading"). In paragraph 11.48 of the arbitration award, the arbitral tribunal concludes that TNG intentionally misled FNP both as regards production and reserves ("the Tribunal concludes that TNG deliberately misled FNP both in respect of production and reserves at the KOF") and with respect to the transferability of the concession ("and in respect of the possibility to have the License for the KOF transferred to the JV").

The arbitral tribunal also assessed the effects of the Paris breach in one context, which is particularly clear from paragraph 11.52 of the arbitration award, in which the arbitral tribunal concludes that the effects of the misleading information was that FNP agreed to abandon the project against TNG repaying to FNP that, which FNP had invested ("The effect of the misleading information was that FNP agrees to abandon the KOF project subject to TNG repaying to FNP the money it had invested in the KOF").

Thus, according to the Court of Appeal it is not possible to establish from the arbitration award that the outcome would have been the same if the arbitral tribunal had reviewed whether TNG had misled FNP only with respect to flow rates and the transferability of the concession.

The importance of the liquidation breach under the arbitration award

Since FNP in these challenge proceedings has also maintained that it was the liquidation breach that granted FNP the entirety of the awarded amount, the Court of Appeal must decide whether the arbitration award has the meaning that the liquidation breach alone serves as grounds for the outcome. If so, the arbitration award shall not be annulled despite the established excess of mandate.

FNP has maintained that its case meant that the liquidation breach formed an autonomous part of its case. TNG has objected that the liquidation breach was dependent on the arbitral tribunal's decision on the Paris breach. The explanation for this is, according to TNG, that the liquidation breach could have entailed a loss for FNP only if the review was made based on the hypothetical assumption that the liquidated company at the time of the liquidation held a concession to exploit the oil field.

The Summary does not clearly provide whether FNP maintained that the liquidation breach alone had caused the entirety of the loss for which FNP claimed compensation in the arbitration. However, the Summary does provide that TNG raised several objections against FNP's assertions with respect to the liquidation breach and that one of these objections was aimed at the fact that Tyumtex at the time of liquidation had no assets or liabilities, and that the liquidation could not have caused any loss or damage (paragraph 10.41 of the arbitration award). Against this FNP objected that the liquidation finally deprived FNP of its rights as a shareholder, including the rights to receive 40 percent of

the net profits, as well as prevented TNG from rectifying its breaches of contract. FNP also maintained that the effects of the liquidation should be determined in the hypothetical scenario that the concession to the oil field had been transferred to Tyumtex and that TNG had not committed any of the other breaches of contract (paragraphs 10.43 and 10.44 of the arbitration award).

According to the Summary, FNP maintained that the breaches of contract FNP referenced in the arbitration had caused the loss for which FNP claimed compensation (paragraphs 10.62 and 10.78 of the arbitration award). The amount claimed was based on FNP's rights under the parties' agreement to 40 percent of the net profits (paragraphs 10.63 and 10.85 of the arbitration award).

The recounted sections do not, according to the Court of Appeal, clearly provide that FNP's case included the assertion that the entirety of FNP's loss had been caused by the liquidation breach.

However, the arbitral tribunal appears to have interpreted FNP's in such a manner that each alleged breach of contract had the effect that FNP lost its investment and suffered the entirety of the loss as a result thereof. Paragraph 11.7 of the arbitration award provides that the claim for compensation is based on a number of alleged breaches of contract and that, according to FNP, each of these breaches of contract led to FNP's loss of the entirety of its investment in the oil field, which in its turn led to substantial losses ("On FNP's case each of those breaches caused FNP to be deprived of its investment in the KOF. As a result FNP suffered substantial damage".). The question to be decided by the Court of Appeal is thus whether the arbitration award actually entailed that the liquidation breach alone was the grounds for the awarded compensation.

In support of its assertion that the liquidation breach alone was the grounds for FNP's case having been granted, FNP has maintained that the arbitral tribunal concluded that the claim for compensation based on the Paris breach was barred by statute of limitations. If this is correct, the awarded compensation would to no extent relate to the Paris breach, i.e. the portion of the arbitration award for which the Court of Appeal has concluded that the arbitral tribunal exceeded its mandate.

First, the Court of Appeal will review whether the arbitral tribunal in the arbitration award concluded that FNP's claim for compensation based on the Paris breach was barred by statute of limitations.

In his witness statement, Mr. L has stated that the claim for compensation based on the Paris breach was indeed as such barred by statute of limitations, but that the parties had devoted so much attention to the Paris breach that the arbitral tribunal nevertheless wished to provide its opinion on the issue. He has also stated that the arbitral tribunal's conclusion with respect to statute of limitations, just as the arbitral tribunal's conclusion that the liquidation breach alone caused the entirety of FNP's loss, is set forth in the arbitration award.

The arbitration award deals with the issue of statute of limitations on p. 79-81. In paragraph 11.83 the arbitral tribunal concludes that a claim for compensation based solely on the Paris breach would have been barred by statute of limitations, unless the period relevant for the statute of limitations had been interrupted. According to the arbitral tribunal, the last relevant breach of contract entailed that the period was extended until June of 2009 (paragraph 11.84). When read in conjunction with paragraph 11.83, the last relevant breach of contract was the liquidation breach. Thereafter, the arbitral tribunal reviewed whether interruption had occurred during the time prior to June of 2009 and concludes this to be the case (paragraphs 11.85 and 11.86). The arbitral tribunal's conclusion is set out in paragraph 11.87, in which the arbitral tribunal notes that FNP's claim for compensation for losses is not barred by statute of limitations and that TNG thus had failed in its attempts to object in reference to statute of limitations ("The time bar defences raised by TNG in respect of the Damage Claim therefore must fail.").

The conclusion of the Court of Appeal is that the arbitration award did not entail that FNP's claim for compensation based on the Paris breach was barred by statute of limitations. The review of whether the arbitration award entailed that the liquidation breach alone led to FNP's claim for compensation was granted must thus be decided based on the fact that the claim for compensation based on the Paris breach was not barred by statute of limitations.

Thus, the question to be decided by the Court of Appeal is whether the arbitration award nevertheless entailed that the liquidation breach alone was the basis for the arbitral tribunal's conclusion to grant FNP's case.

The arbitration award deals with the alleged breaches of contract separately. Following each section, the arbitral tribunal under separate headings decides on the effects of each of the breaches of contract. With respect to the Paris breach, the arbitral tribunal concluded in paragraph 11.55 that this had led to FNP being deprived of its investments and profits from the project. With respect to the *failure to rectify*, paragraph 11.67 provides that the loss due to the breach of contract was, in principle, the same as the loss due to the Paris breach. With respect to the exclusivity breach, the arbitral tribunal states in paragraph 11.70 that it caused substantial financial losses, but that the exact amount of the losses did not require specification. With respect to the liquidation breach, the effects are deal with in paragraph 11.73, which provides that FNP as a result of the breach was deprived of its rights as a shareholder and thus deprived of the right to dividends and profits from the oil field.

The above paragraphs do provide some support that the arbitral tribunal has concluded that each of the breaches of contract alone – with the possible exception of the exclusivity breach – caused the entirety of FNP's loss. This is, however, contradicted by other sections of the arbitration award. In paragraph 11.76, under heading "Summary", the arbitral tribunal states that TNG has breached the agreement in all the alleged manners, that the breaches were intentional and formed "part of a wider scheme deliberately designed to deprive FNP of its interests in the KOF project". The effects of the breaches were, according to the arbitral tribunal, in all cases substantial financial damage ("the effect of the breaches are in all cases substantial economic damage"). With respect to the Paris breach, the breach related to failure to rectify, and the liquidation breach, the loss corresponds to the entirety of FNP's interests in the project ("the damage caused corresponds to FNP's entire interest in the KOF project"). With respect to the exclusivity breach, the loss is stated to be lesser, but this has according to the arbitral tribunal no relevance, since TNG is fully liable based on the other breaches of contract ("since TNG is fully liable on account of the remaining breaches"). The arbitral tribunal ends by concluding that it in any event is the total effect of the breaches of contract that FNP has

lost the entirety of its interests ("At any rate the combined effect of the breaches is a total deprivation of FNP's interest".).

In paragraph 11.107 of the arbitration award, the arbitral tribunal reverts to its conclusion that TNG's numerous breaches of contract establish a pattern with the purpose of concealing the actual circumstances surrounding the exploitation of the oil field from FNP. The arbitral tribunal also refers to the fact that TNG's subsequent actions – contacts with a third party and liquidation of Tyumtex without informing FNP – served the purpose of finally depriving FNP of its legal interests. In paragraph 11.115 the arbitral tribunal summarizes its conclusion as follows.

> "Having found that TNG is guilty of multiple breaches of contract, having dismissed TNG's defences and finding that FNP is entitled to damages the Tribunal must next proceed to consider the economic effects of the breaches".

The portion of the arbitration award that deals with the calculation of the losses does not include any clarification on the arbitral tribunal's reasoning on the issue of the relationship between the compensation and each of the respective breaches of contract.

The conclusion of the Court of Appeal is therefore that the arbitration award does not entail that the liquidation breach alone was the grounds for the award.

The question whether TNG has lost the right to challenge based on excess of mandate

FNP has objected that TNG in any event has lost its right to reference any excess of mandate because TNG participated in the arbitration without objecting to FNP's case as it was presented in FNP's opening and closing statements. The conclusions of the Court of Appeal set out above entail that the fact that TNG had provided misleading information with respect to oil reserves had not been referenced by FNP. It has further not been established in the case that the arbitral tribunal clarified to the parties during the arbitration that it intended to review FNP's assertion with respect to misleading concerning flow rates in such a manner that it would also cover oil reserves. Thus, TNG cannot by participating in the arbitration be deemed to have accepted that the arbitral

tribunal would review whether TNG had provided misleading information with respect to oil reserves.

Conclusions of the Court of Appeal

The Court of Appeal has concluded that the arbitral tribunal was bound by the concrete legally relevant circumstances that were set out in the Summary concerning the breaches of contract alleged by FNP. According to the Summary, FNP did not reference anything with respect to oil reserves. Despite this the arbitral tribunal has concluded that TNG had provided misleading information with respect to oil reserves. This constituted an excess of mandate. It is not possible to ascertain whether the excess of mandate did not affect any portion of the operative part of the award. Therefore, the conclusion of the Court of Appeal is that the established excess of mandate shall entail the annulment of the arbitration award.

Because the Court of Appeal has concluded the arbitration award shall be annulled due to the arbitral tribunal having exceeded its mandate, there is no reason to review TNG's other challenge grounds.

Litigation costs

FNP is the losing party and shall consequently compensate TNG for its litigation costs.

TNG has claimed compensation for litigation costs in the amount of SEK 7,705,807, of which SEK 6,750,000 comprises costs for legal counsel and SEK 955,807 comprises expenses.

FNP has stated that TNG's litigation costs are unreasonably high. FNP has maintained that the case before Court of Appeal has lasted a limited time, involved exchange of submissions and appearances before the court of customary nature and have not been of such scope as to motivate the high claim for compensation. FNP has also questioned whether there were any reasons behind the decision of TNG's counsel to involve four different persons, two of whom were entirely new to the case, in the efforts to protect TNG's interests.

TNG has objected that, amongst other things, its investigation efforts involved a substantial arbitration award concerning a substantial number of issues, that it has been

necessary to review the entirety of the procedural materials, that it has been necessary to retain external experts and that FNP to some extent has adjusted its position in the challenge proceedings with respect to material issues. TNG has also maintained that the work has been divided between the counsel.

The Court of Appeal concludes as follows.

The number of days of the hearing and the exchange of submissions in the case are not as such of such scope so as to motivate the high compensation claimed by TNG. When determining the reasonableness of claimed compensation for litigation costs, also other circumstances may be considered. It is a reasonable starting point that the claimant in challenge proceedings could be required to undertake substantial investigation measures and that the costs consequently could substantially exceed those of the respondent. However, also when this is taken into consideration does the claimed amount not appear reasonable. It cannot, according to the Court of Appeal, be deemed reasonably required to protect the interests of TNG that it be represented by four counsel, of which three were *advokater*, at the oral preparatory hearing as well as at the main hearing. The Court of Appeal further questions whether the substantial submissions submitted in the case were required to present TNG's case. Particularly with respect to the grounds referenced by TNG concerning the arbitral tribunal as a whole having been biased, which were mainly aimed at the arbitral tribunal's review of the merits and thus not subject to challenge. Therefore, the Court of Appeal concludes that the reasonable costs for the protection of TNG's interests in the case are lower than the claimed amount. In the Court of Appeal's opinion, a reasonable amount for legal counsel is SEK 5,000,000, which is approximately three fourths of the claimed amount. Beyond this, TNG shall be awarded compensation for expenses in the claimed amount. The total amount of the compensation thus amounts to SEK 5,955,807.

Appeal

The second paragraph of Section 43 of the Swedish Arbitration Act provides that the judgment of the Court of Appeal may be appealed only if it is of importance for the guidance of case law that an appeal is reviewed by the Supreme Court.

The Court of Appeal concludes that there are no reasons to allow appeals of the decision.

The decision of the Court of Appeal may not be appealed.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Senior Judge of Appeal CL and Judges of Appeal KB, reporting Judge of Appeal, and PS.