

LCIA Reference No. 101682, Decision Rendered 4 January 2011

<i>Subject:</i>	Challenge to sole arbitrator's appointment pursuant to Article 10.4 of the LCIA Rules 1998, based on Article 10.3 (justifiable doubts as to the arbitrator's impartiality or independence)
<i>Division/Court member:</i>	Vice President of the LCIA Court (acting alone)
<i>Summary:</i>	<p>An alleged lack of knowledge of relevant laws is not a basis for a challenge for alleged bias or lack of independence.</p> <p>An arbitrator's professional experience in the jurisdiction of the country of origin of one party, including language ability and sitting as an arbitrator in arbitrations administered by institutions of that jurisdiction, and the fact that the arbitrator may have made substantial contributions to the development and modernisation of laws in that jurisdiction, does not create a justifiable doubt as to that arbitrator's independence or impartiality.</p>

1 Background

1.1 The underlying dispute arose out of four sale and purchase agreements made between the Claimant and the Respondent. The Claimant was a company incorporated in the Russian Federation, whose principal shareholder was a company registered in Cyprus, and the Respondent was a company incorporated in Germany.

1.2 The agreements provided that they were governed by default by the Vienna Convention on the International Sale of Goods (the "CISG") and, if the CISG does not apply, by German law. The agreements also provided that disputes would be considered by the LCIA and settled according to the procedures of the LCIA. The arbitral seat was London and the language of the arbitration was English.

1.3 The Claimant filed a Request for Arbitration with the LCIA on 2 September 2010. The Respondent filed a Response on 6 October 2010, in which it indicated that arbitrators from the former USSR and Cyprus should not be appointed.

1.4 By fax dated 26 October 2010, the LCIA notified the parties that the LCIA Court had appointed a sole arbitrator (the "Sole Arbitrator"), and sent to the parties a copy of the Sole Arbitrator's curriculum vitae and his statement of independence and consent to appointment revealing no conflict. The Sole Arbitrator appointed was of not of the same nationality as either of the parties.

1.5 By letter dated 10 November 2010, the Respondent filed a challenge to the Sole Arbitrator, under Article 10.3 of the LCIA Rules, stating that justifiable doubts existed as to the Sole Arbitrator's independence and impartiality due to his "*intensive relations*" and activities in Eastern European Countries and, in particular, Russia.

1.6 By letter dated 15 November 2010 the Claimant advised that it did not agree to the challenge.

1.7 Also on 17 November 2010, the Respondent made further comments on the challenge.

1.8 By letter of 17 November 2010, the Sole Arbitrator advised the LCIA that he did not wish to withdraw and addressed the Respondent's arguments relating to the challenge. By email of the same date, the LCIA forwarded to the parties the Sole Arbitrator's letter to the LCIA and asked whether the Respondent wished to proceed with the challenge in light of the Sole Arbitrator's letter.

1.9 By letter dated 22 November 2010, the Respondent confirmed that it wished to proceed with its challenge.

1.10 The parties and the Sole Arbitrator made submissions on the challenge.

1.11 By email dated 8 December 2010, the LCIA notified the parties that the LCIA Court had, pursuant to Article D.2 of the Constitution of the LCIA Court, designated a Vice President of the LCIA Court to determine the challenge.

1.12 The Vice President rendered his Decision on 4 January 2011.

2 Decision excerpt

"[...] THE APPLICABLE LAW

31. *Section 33(1) of the Arbitration Act 1996, a mandatory provision of the arbitral law of the seat, provides that an arbitral tribunal shall act 'fairly and impartially as between the parties' and that it shall 'adopt procedures suitable to the circumstances of the particular case'.*
32. *The Arbitration Act 1996 codifies the test applied in R v Gough,¹ establishing that there must be a 'real danger' of bias for a challenge to an arbitrator to succeed.*
33. *The test in R v Gough was later reformulated by the House of Lords in the case of Porter v Magill,² into a test of a 'real possibility' of bias, as follows: 'whether [a] fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased'.*

ANALYSIS OF THE CHALLENGE

34. *A threshold observation is in order. Some aspects of the Respondent's challenge are not a challenge for lack of independence or impartiality, but rather question or take issue with the LCIA's decision to appoint [the Sole Arbitrator]. For example, the Respondent asserts that the LCIA should appoint someone with expertise in European and international competition and anti-trust law, rather than [the Sole Arbitrator], who is alleged to work mainly on Eastern European business law.*

¹ R v Gough [1993] 2 All E.R. 724.

² Porter v Magill [2001] UKHL 67.

35. *[The Sole Arbitrator] has confirmed that he has adequate knowledge regarding the Vienna Convention on International Sale of Goods as well as other aspects of the law including competition and anti-trust law.*
36. *Such complaints are not a basis upon which to challenge an arbitrator for alleged bias or lack of independence.*
37. *To the extent that the Respondent nonetheless challenges the appointment on the grounds that [the Sole Arbitrator] lacks the qualifications necessary to resolve the issues and render a suitable, enforceable award, the objection is overruled. [The Sole Arbitrator] has confirmed his knowledge of the field, his curriculum vitae reveals extensive legal work and experience more than sufficient to resolve the issues in controversy in this arbitration.*
38. *The rest of the challenge focused principally on three circumstances:*
- *[the Sole Arbitrator] had significant influence on important draft laws in Eastern Europe and Russia;*
 - *[the Sole Arbitrator] has a very good knowledge of Russian language; and*
 - *[the Sole Arbitrator] works mainly on Eastern European business law.*
39. *Those other grounds fare no better. The fact that [the Sole Arbitrator] speaks fluent Russian, served as an arbitrator for Russian arbitral centres, or may have made substantial contributions to the development and modernisation of laws in Eastern Europe would not create in the mind of a reasonable person a 'real possibility' that [he] is biased. The Respondent has not pointed to anything that would create any justifiable doubt about his independence and impartiality.*

DECISION

40. *Accordingly, the 10 November 2010 challenge of [the Sole Arbitrator]'s service as arbitrator is denied.*
41. *The decision as to the allocation of the costs caused by this challenge, including the LCIA's costs and fees, as well as the Claimant's reasonable costs and counsel's fees are left to the discretion of the Sole Arbitrator as determined by him in the arbitration."*