Dutch and Nigerian Subsidiaries of Oil Giant Eni Bring OPL 245 Battle to ICSID

By:

Munia El Harti Alonso

October28, 2020

On October 9, the Dutch and Nigerian subsidiaries[1] of Italian Eni have filed a request for arbitration at ICSID.[2] The dispute revolves around Shell and Eni's 2011 purchase of the Oil Prospecting Licence ("OPL 245") from the company Malabu Oil and Gas Limited ("Malabu") for USD $1.3 Billion. Malabu, an entity controlled by Nigerian businessmen was the original awardee of the OPL 245 oil block, an ultra-deep offshore petroleum block in Nigerian waters. Shell formed part of the oil prospecting deals, but it is not a claimant in this filing. It is worth noting that in 2011 Shell settled an ICSID case against Nigeria for the alleged expropriation of Shell's right to OPL 245.[3]

Eni is bringing this ICSID dispute after the Federal Republic of Nigeria, (FRN), brought corruption cases against Eni. The FRN filed two suits asserting corruption offenses tied to OPL 245 before courts in Milan[4] and Nigeria.[5] Asset freezing actions were also commenced in the United Kingdom[6]

regarding funds related to OPL 245.[7]

It was reported that Eni is making at least two claims in the ICSID case. First, the impropriety of the corruption allegations. Second, the denial to convert the Oil Prospecting License into an Oil Mining License ("OML") as a breach of the 1992 Netherlands Nigeria BIT.

Eni has already contended the impropriety of the corruption allegations in its press releases, thereby signalling the claims to come before ICSID. As such, Eni indicated seven key arguments, *inter alia* that: (i) OPL 245 brings benefits to the FRN; (ii) the cost of operation of OPL 245 was fair and reasonable; (iii) Eni made the payment directly to the FRN; (iv) Eni was unaware of Malabu's use of the funds; (v) the broker in the deal did not act on behalf of Eni; (vi) Eni's senior management received no bribe; and (vii) Eni complied with the audit procedures.[8]

Additionally, Eni has requested discovery of documents in the US against two investment management funds regarding their alleged involvement in the OPL. The investors have retained the boutique Three Crowns, whilst counsel for Nigeria has not been announced.

---

[1] Eni's subsidiaries Eni International B.V. (Dutch), Eni Oil Holdings B.V. (Dutch) and Nigerian Agip Exploration Limited (Nigerian). Regarding the Nigerian subsidiary, the test for foreign control of local subsidiaries is set out at article 9 of the Netherland Nigeria BIT.

[2] *Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria*(ICSID Case No. ARB/20/41).

[3] *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/07/18). August 1, 2011 - The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1). Accessible at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/18.

[4] Criminal Proceeding No. 54772/13 and Criminal Proceeding No. 1351/18 R.G.

[5] Actions brought by Nigeria based on the Corrupt Practices and Other Offenses Act of 2000.

[6] *But see*, [2020] EWHC 1315 (Comm), the Decision of the High Court of Justice in London of 22 May 2020 denying jurisdiction over the OPL 245 case and rejecting the lawsuit filed by the FRN. Accessible at: https://www.bailii.org/ew/cases/EWHC/Comm/2020/1315.pdf.

[7] [2017] EWHC **** (Comm), Approved Judgement of the High Court of Justice Queen's Bench Division Commercial Court of 15 December 2017.

[8] “The acquisition of Block 245 in Nigeria”, Eni Press Release.

View online: Dutch and Nigerian Subsidiaries of Oil Giant Eni Bring OPL 245 Battle to ICSID

Provided by Afronomicslaw