An Investor's Perspective – Repsol/YPF in Argentina

Rethinking International Investment Law:

Deputy Secretary General

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Repsol Perspective

YPF Case

Legal aspects of the
The YPF Case – Background

Repsol Highlights

➢ Repsol is one of the five largest private listed oil and gas companies in Europe.

➢ Repsol is an integrated oil and gas company engaged in the exploration, development and production of crude oil and natural gas. It operates in four segments: upstream, liquefied natural gas (LNG), downstream and natural gas.

➢ The Repsol workforce is made up of 25,000 professionals spread across more than 30 countries and consists of more than 36 nationalities.
YPF in Argentina

15 billion dollars
in 1999 Repsol purchased 97.81% of YPF in a cash payment of over

Repsol in YPF

YPF Highlights

The YPF Case - Background II
The YPF Case – Background III

Financial Impact

- **Operating Income**
  - €1.2bn
  - 25.6%

- **Net income**
  - €0.5bn
  - 21.0%

- **Investments**
  - €2.2bn
  - 33.7%
Liquefied natural gas in the country

Refinery operations as well as helping with the introduction of increasing production to its maximum value and maximizing keeping pace with the increased demand on liquid fuels.

Not only maintaining jobs but even increasing employment from 9,000 employees in 2000 to 16,000 employees in 2011.

Full support to the country as it emerged from its crisis of the early 2000s.

Achieves its main objectives:

Smooth relationship with the Argentinean government as YPF

The YPF Case – The Long Sweet Period
The YPF Case – The Long Sweet Period

- Significant commitment to "Argentinise" YPF by allowing local investors to invest in YPF (Petersen Group acquired a 25% stake in YPF in 2008)

- It discovered the third largest unconventional hydrocarbons reservoir in the world at the Vaca Muerta formation.

- The Argentinean government retained its Golden Share and presence at the Board of Directors and therefore full control of YPF operations.

> "The State is in full agreement with the activities that the Company is developing"

Roberto Baratta – November 2011
State representative at YPF’s Board of Directors and National Planning Ministry’s Undersecretary of Coordination
The share price of YPF plummeted more than 50% from January to mid-April 2012.

The primary aim: create a political and popular climate hostile to Repsol and conducive to the takeover of YPF through the expropriation of the controlling interest held by Repsol.

Central Government and the Provinces against Repsol

Common and concerted harassment strategy between the most elementary constitutional guarantees

Result: appropriation of (corporate and management) control of YPF and the deprivation of Repsol’s rights, in violation of the law.

Revocation of exploration permits and operation licenses, etc.

Sanctioning proceedings,

Threats of nationalization,

Unprecedented campaign of harassment

January 2012: public change of attitude of local authorities

The YPF Case – The Harassment Campaign
The YPF Case – The Takeover and Seizure

16 April 2012: Argentina’s President introduces bill declaring hydrocarbon industry of national public interest and the expropriation of 51% of YPF’s share capital from Repsol.

Decree resolves immediate takeover of YPF by appointing a government controller

3 May 2012: Argentinean Congress approves law declaring
- public interest 51% in YPF S.A.’s share capital, out of the 57% owned by Repsol;
- immediate seizure of the voting and economic rights attached to those shares
- two year period to the Argentinean government to initiate the expropriation procedure

Over ten months later: formal title over the YPF shares still with Repsol but:
- voting and economic rights confiscated
- no compensation received
- no process initiated by Argentinean Government.
The YPF Case – The Breach of the Rule of Law

Breaches of the Argentinian Constitution:
- The right to property
- Guarantee of equal treatment and non-discrimination
- Principle of reasonableness
- Right of due process

1993 YPF privatisation and listing in Buenos Aires and New York Stock Exchanges
- YPF By-Laws: undertaking to launch 100% tender offer in case of re-taking control of YPF

Breaches of the 1991 Argentina – Spain BIT
- Fair and equitable treatment
- Non-discrimination
- Expropriation only with fair compensation
The YPF Case – Legal Strategy

- Main objective: settlement

- Meanwhile: pursuit of all available legal actions in defence of our stakeholders’ interest

- Focusing on the various breaches of law:
  - Argentina: unconstitutionality of the takeover and seizure of the controlling interest of Repsol in YPF
  - Spain and US: preventing third parties to take any unlawful advantage from the confiscation
  - ICSID: breach of BIT claiming for the restitution of the confiscated stakes, or alternatively a fair compensation and damages
Very complex enforcement challenges

Experts...
Memorials

Potential challenge of jurisdiction
Potential dispute to disqualify appointed arbitrators

Constitution of the Tribunal
Registration of Request for Arbitration
Notice of Conflict

(between 3 to 5 years)

Expensive and long time-consuming procedure (average binding international doctrine; although well-repected, not fully)

Very basic principles of protection

BITs and international arbitration:

International Investment Protection

The YPF Case -
The YPF Case –
International Investment Protection

- Repsol at ICSID
  - Started the procedure in April 2012
  - Our request of arbitration was registered by ICSID on 18 December 2012
  - Repsol appointed arbitrator in February 2013
  - Constitution of the Tribunal pending

- Are BITs, the arbitration procedures and, in particular, enforcement of awards in accordance with the current business world?
THANK YOU