

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE CZECH AND SLOVAK FEDERAL REPUBLIC AND THE SWISS CONFEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS SIGNED ON 5 OCTOBER 1990, ENTERED INTO FORCE ON 7 AUGUST 1991 ("TREATY")

Case No. NN 452/FM

-between-

KONSORTIUM OECONOMICUS
(Switzerland)

Claimant

-and-

THE CZECH REPUBLIC
(Czech Republic)

Respondent

Claimant and Respondent collectively referred to herein as the Parties

DECISION FOR TERMINATION OF THE PROCEEDINGS

Arbitral Tribunal
Dr. Eduardo Silva Romero
Dr. Sabine Konrad
Mr. Andreas Ueltzhöffer

1. INTRODUCTION

1. The present arbitration involves the following Parties:

1.1 Claimant

2. The Claimant in this arbitration is KONSORTIUM OECONOMICUS ("Konsortium" or "Claimant") with an address for service at Fiergasse 22, P.O. Box 1458, 8021 Zurich, Switzerland. Pursuant to a Power of Attorney of 24 August 2011, JUDr () and Mr () are acting as representatives of Konsortium. By the same Power of Attorney, JUDr () and Mr () have appointed JUDr () and JUDr () to represent the Claimant as counsel in these proceedings.

1.2 Respondent

3. The Respondent is The Czech Republic ("Czech Republic" or "Respondent"), with an address for service at Letenská 15, 118 10 Prague 1, Czech Republic.

4. Respondent is represented by Ms. Karolína Horáková, WEIL GOTSHAL & MANGES s.r.o., Charles Bridge Center, Křižovnické náměstí 193/2, 110 00 Prague 1, Czech Republic, as counsel in these proceedings.

2. PROCEDURAL BACKGROUND

5. On 31 July 2008, Claimant sent an assertion of Compensation of Damages to Respondent and requested conciliation proceedings to be commenced between the Parties pursuant to Article 9(1) of the Treaty.
6. By letter dated 10 December 2008, Claimant appointed JUDr Jiří Marvan as its co-arbitrator pursuant to Article 9(2) of the Treaty.
7. By letter dated 30 March 2009, the Czech Republic appointed Dr. Sabine Konrad as its co-arbitrator pursuant to Article 9(2) of the Treaty.
8. By letter dated 6 April 2009, Dr. Sabine Konrad confirmed her acceptance of the appointment by the Czech Republic as co-arbitrator.
9. On 25 February 2010, upon the request of Respondent pursuant to Articles 9(2)(a) and 9(2)(b) of the Treaty, the ICC International Court of Arbitration acting as appointing authority appointed Dr. Eduardo Silva Romero as the Chairman of the Arbitral Tribunal in accordance with Article 4 of the Rules of ICC as Appointing Authority.

10. By letter dated 1 March 2010, the Arbitral Tribunal requested the Parties to send to the Arbitral Tribunal on or before 8 March 2010 all submissions and correspondence previously exchanged between them in relation to the present arbitration.
11. On 8 March 2010, Respondent provided the Arbitral Tribunal with all correspondence relating to the arbitration sent on behalf of the Czech Republic.
12. On 18 March 2010, the Arbitral Tribunal sent to the Parties an email sent by JUDr Jiří Marvan, the co-arbitrator appointed by Claimant, in which he declared that he no longer wished to act as arbitrator in the present dispute and requested the Parties' comments on the same on or before 25 March 2010.
13. By letter dated 31 March 2010, the Arbitral Tribunal acknowledged receipt of Respondent's comments dated 25 March 2008 on the declaration made by JUDr Jiří Marvan and noted that Claimant had not provided any comments on the same. In light of Articles 9(2)(a) and 9(2)(b) of the Treaty, the Arbitral Tribunal granted Claimant a new two month time period from the date of the letter to appoint a replacement arbitrator and informed the Parties that should Claimant fail to nominate an arbitrator within this time period, either Party could invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointment.
14. By letter dated 4 June 2010, the Arbitral Tribunal noted that Claimant had failed to nominate an arbitrator within the two month time period and informed the Parties that either Party could accordingly invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointment.
15. By letter dated 20 August 2010, the Arbitral Tribunal invited the Parties to inform it on or before 30 August 2010 whether any steps had been taken by either Party to request the President of the Court of Arbitration of the International Chamber of Commerce in Paris to appoint an arbitrator on Claimant's behalf.
16. By letter dated 30 August 2010, Respondent informed the Arbitral Tribunal that it had not requested the President of the Court of Arbitration of the International Chamber of Commerce to appoint an arbitrator on Claimant's behalf.
17. By letter dated 8 September 2010, the Arbitral Tribunal noted Claimant's failure to inform it, within the specified timeframe, whether it had taken any steps to appoint an arbitrator and invited Respondent to inform the Arbitral Tribunal, on or before 15 September 2010, whether it intended to proceed to invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to appoint an arbitrator on Claimant's behalf.

18. On 15 September 2010, Respondent informed the Arbitral Tribunal that it did not intend to invite the President of the Court of Arbitration of the International Chamber of Commerce to appoint the third arbitrator on Claimant's behalf.
19. By letter dated 23 September 2010, the Arbitral Tribunal informed the Parties that in the absence of a third arbitrator, the arbitration could neither go forward nor be terminated by the two Members of the Tribunal acting alone and accordingly invited the Parties to write to the President of the Court of Arbitration of the International Chamber of Commerce in Paris on or before 1 October 2010 and request the appointment of a third arbitrator, so that the arbitration could proceed or be terminated by a duly constituted Arbitral Tribunal.
20. On 1 October 2010, Respondent requested the ICC International Court of Arbitration to act as appointing authority in accordance with the Rules of ICC as Appointing Authority in UNCITRAL or other Ad Hoc Arbitration Proceedings and to accordingly appoint an arbitrator on behalf of Claimant.
21. By letter dated 11 February 2011, the Secretariat of the ICC International Court of Arbitration informed the Parties that the ICC International Court of Arbitration had appointed Mr. Andreas Ueltzhöffer as co-arbitrator replacing JUDr Jiří Marvan on 10 February 2011.
22. By letter dated 21 February 2011, Respondent expressed its reservations regarding the appointment of Mr. Andreas Ueltzhöffer as co-arbitrator and its view that Mr. Andreas Ueltzhöffer did not satisfy the test of independence required under the ICC Rules of Arbitration.
23. By email dated 22 February 2011, Mr. Andreas Ueltzhöffer responded to the reservations expressed in Respondent's letter of 21 February 2011 in respect of his independence to serve as arbitrator.
24. By letter dated 28 February 2011, the Arbitral Tribunal sent to the Parties a declaration submitted by Dr. Sabine Konrad and invited the Parties to confer on several procedural points and to convey to it their proposals in this regard on or before 7 March 2011. The Arbitral Tribunal further informed the Parties that it considered that a reasonable advance to cover the costs of the first phase of the arbitral proceedings would be €50,000 and that the Parties should therefore contribute €25,000 each. The Arbitral Tribunal also invited the Parties to discuss and revert to the Arbitral Tribunal concerning the arrangements for the appointment of a fundholder such as the LCIA or the PCA to hold the advance on costs on or before 7 March 2011.

25. By letter dated 4 March 2011, the Secretariat of the ICC International Court of Arbitration informed the Parties that should the Czech Republic decide to file a formal challenge against Mr. Ueltzhöffer, the Secretariat would require a written agreement acknowledging that both parties wish to submit the challenge to the ICC International Court of Arbitration as well as payment of a fee in the amount of US\$2500 pursuant to Article 6(1) of the ICC Rules.
26. By letter dated 4 March 2011, the Arbitral Tribunal granted Respondent's requested extension until 14 March 2011 to respond to its letter dated 28 February 2011.
27. By letter dated 15 March 2011, the Arbitral Tribunal acknowledged receipt of Respondent's letter informing the Arbitral Tribunal of its proposal in respect of the organizational issues outlined in the Arbitral Tribunal's letter of 28 February 2011 and noted that Claimant had failed to provide any comments within the time imparted. The Arbitral Tribunal accordingly invited Claimant to provide its comments relating to the same on or before 21 March 2011 failing which it would proceed to make a decision on the procedural issues set out in its letter of 28 February 2011.
28. By letter dated 5 April 2011 and in light of the Parties' failure to agree on the arrangements for the appointment of a fundholder to hold the advance on costs, the Arbitral Tribunal invited the Parties to pay, on or before 20 April 2011, €25,000 each to the bank account of the Chairman's law firm.
29. By letter dated 20 April 2011, Respondent informed the Arbitral Tribunal of its decision not to presently deposit its share of the advance on costs "*due to the very unusual nature of the conduct of the Claimant in these arbitration proceedings.*"
30. By letter dated 6 May 2011, the Arbitral Tribunal fixed the seat of arbitration as Frankfurt am Main, Germany and invited the Parties to pay €25,000 each towards the advance on costs on or before 20 May 2011, failing which the Arbitral Tribunal would terminate the proceedings in accordance with section 1056 (3) of the Zivilprozessordnung ("ZPO") which provides in relevant part that: "*The arbitral tribunal shall issue an order for the termination of the arbitral proceedings... when the parties fail to pursue the arbitral proceedings in spite of being so requested by the arbitral tribunal...*".
31. By communication dated 20 May 2011, Respondent informed the Arbitral Tribunal that it would not pay its portion of the advance on costs within the set deadline.
32. Claimant did not make any payment towards the advance on costs before 20 May 2011.

33. By letter dated 26 May 2011, the Arbitral Tribunal informed the Parties of its intention to terminate the proceedings as foreseen in its letter of 6 May 2011 and invited the Parties to submit applications for costs on or before 10 June 2011.
34. On 10 June 2011, Respondent submitted an application for costs.
35. In its application for costs, Respondent requested that Claimant be ordered to reimburse Respondent for the costs incurred in connection with the arbitration in the total amount of CZK 6,206,877.05, including VAT.
36. By letter dated 14 June 2011, the Arbitral Tribunal invited Respondent to provide a breakdown of the costs claimed on or before 24 June 2011.
37. On 20 June 2011, the Arbitral Tribunal informed the Parties that it had received on 16 June 2011 a letter from Claimant dated 14 June 2011 in which Claimant asserted that it had paid its share of the advance on costs amounting to €25,000 and requested that the deadline for payment be extended. The Chairman of the Arbitral Tribunal confirmed that such payment had been made and invited Respondent to provide its comments on Claimant's letter on or before 24 June 2011.
38. By letter dated 24 June 2011, Respondent provided a breakdown of its costs claimed and its comments on Claimant's letter dated 14 June 2011.
39. By letter dated 1 July 2011, the Arbitral Tribunal informed the Parties that the proceedings could not be terminated in light of Claimant's payment. The Arbitral Tribunal further requested Claimant to re-send the payment of €25,000 on or before 15 July 2011 given that the previous payment had been rejected by the Chairman's law firm due to the unidentified sender. The Arbitral Tribunal further proposed that a meeting be held on 1 August 2011 to discuss the steps of the arbitration going forward.
40. By letter dated 24 July 2011, the Arbitral Tribunal acknowledged receipt of a payment of €25,000 made by Claimant and confirmed that a procedural meeting would be held on 1 August 2011, as foreseen in the Arbitral Tribunal's letter of 1 July 2011, in order to organize the proceedings going forward.
41. By letter dated 26 July 2011, Claimant's counsel informed the Arbitral Tribunal that he would be unable to attend the procedural meeting due to health reasons and requested that the meeting be postponed.

42. By letter dated 27 July 2011, the Arbitral Tribunal ordered Claimant, in light of the latter's repeated failures to meet the deadlines of the Arbitral Tribunal, to appoint a representative who will represent it in the Procedural Meeting. The Arbitral Tribunal further circulated the agenda in advance of the Procedural Meeting.
43. On 1 August 2011, a procedural meeting was held in Frankfurt am Main, Germany which was attended by the Arbitral Tribunal and Respondent.
44. By letter dated 1 August 2011, the Arbitral Tribunal ordered Claimant to appoint on or before 15 August 2011 another representative who would be able to represent it in the present arbitration proceedings and who is fluent in the English language. The Arbitral Tribunal further ordered the Parties to provide it with powers of attorney, authorizing counsel to represent the Parties in the present proceedings by the same date.
45. By letter dated 3 August 2011, the Arbitral Tribunal attached the draft minutes of the Meeting and invited the Parties to provide their comments thereon, on or before 24 August 2011. The Arbitral Tribunal further invited Respondent to pay its share towards the advance on costs on or before 17 August 2011.
46. By letter dated 4 August 2011, Respondent's counsel provided the Arbitral Tribunal with a certified copy of a power of attorney authorizing it to represent Respondent in the present proceedings.
47. By letter dated 10 August 2011, Claimant's counsel, JUDr [redacted], appointed JUDr [redacted] as Claimant's substitute representative.
48. By letter dated 17 August 2011, the Arbitral Tribunal acknowledged receipt of Respondent's payment of €25,000 towards the advance on costs. The Arbitral Tribunal further noted that Claimant had failed to provide a power of attorney within the time limit imparted and ordered Claimant to provide such power of attorney and the full contact details of Dr. [redacted] no later than 24 August 2011.
49. By letter dated 22 August 2011, Claimant sent a Power of Attorney to the Arbitral Tribunal appointing JUDr [redacted] as Claimant's substitute representative.
50. By letter of the same day, the Arbitral Tribunal requested JUDr [redacted] to confirm that he accepted this appointment and to confirm his contact details on or before 24 August 2011. The Arbitral Tribunal further ordered JUDr [redacted] and/or JUDr [redacted] to provide a Power of Attorney signed by their client authorizing them to represent Claimant in the present proceedings on or before 29 August 2011.

51. By communication dated 24 August 2011, Respondent provided its comments on the draft minutes of the Meeting.
52. By communication dated 24 August 2011 JUDr [redacted] provided the Arbitral Tribunal with a Power of Attorney empowering him to represent Claimant ("First Power of Attorney").
53. By further communication of the same day Claimant's counsel, JUDr [redacted] provided the Arbitral Tribunal with a Power of Attorney signed by himself and [redacted] appointing JUDr [redacted] as Claimant's replacement attorney ("Second Power of Attorney").
54. By letter dated 25 August 2011, the Arbitral Tribunal ordered Claimant to provide it with the Czech versions of both the First and Second Powers of Attorney on or before 29 August 2011. The Arbitral Tribunal noted that Claimant had failed to provide any comments on the draft minutes of the Procedural Meeting of 1 August 2011 within the imparted deadline and invited Claimant to provide any comments that it may have on the draft minutes on or before 29 August 2011.
55. By letter dated 30 August 2011, the Arbitral Tribunal acknowledged receipt of Respondent's letter requesting the termination of the proceedings on the grounds of Claimant's failure to pursue the arbitral proceedings in spite of being so requested by the arbitral tribunal and impossibility of continuation of the arbitral proceedings (Section 1056 ZPO) and the reimbursement of its costs by Claimant. The Arbitral Tribunal requested Claimant to provide its comments on Respondent's letter on or before 5 September 2011.
56. By communication dated 31 August 2011, Claimant confirmed that it had no objections to the minutes of the procedural meeting.
57. By further letter dated 31 August 2011, Claimant's counsel, JUDr [redacted], responded to Respondent's letter dated 30 August 2011.
58. By letter dated 1 September 2011, the Arbitral Tribunal acknowledged receipt of Claimant's communication dated 31 August 2011, decided that such communication should be disregarded as it was unintelligible and requested Claimant's replacement counsel, JUDr [redacted], to comment on Respondent's letter of 30 August 2011 on or before 5 September 2011. The Arbitral Tribunal further reiterated its order for Claimant to submit the Czech originals of the Powers of Attorney on or before 5 September 2011. The Arbitral Tribunal also invited Claimant to file its Statement of Claim on or before 1 November 2011 and informed the Parties that it would issue Procedural Order No.1 shortly.

59. By letter dated 6 September 2011, Respondent reiterated its request that the Arbitral Tribunal decide on its request for the termination of the proceedings and, in the alternative, applied to the Arbitral Tribunal to order Claimant to post security on costs that were likely to be incurred by Respondent in the arbitration.
60. By letter dated 8 September 2011, the Arbitral Tribunal requested Claimant to provide its comments on Respondent's letter on or before 20 September 2011 and again reiterated its order for Claimant to provide the Czech originals of the Powers of Attorney on or before 20 September 2011.
61. By letter dated 14 September 2011, the Arbitral Tribunal acknowledged receipt of Claimant's communication dated 13 September 2011 attaching the Czech original of the Second Power of Attorney.
62. By letter dated 22 September 2011, the Arbitral Tribunal noted that Claimant had failed to provide, before the imparted deadline of 20 September 2011, its comments on Respondent's letter dated 6 September 2011 concerning its request for the termination of the proceedings and its application for security for costs. The Arbitral Tribunal further decided that there were no grounds for terminating the proceedings at this stage pursuant to section 1056 ZPO.
63. By letter dated 29 September 2011, the Arbitral Tribunal acknowledged receipt of a letter from Claimant's counsel, JUDr. [redacted] dated 26 September 2011. The Arbitral Tribunal decided to disregard the letter as it was unintelligible and reminded the Parties that any communications with the Tribunal should be in intelligible English.
64. By letter dated 4 October 2011, the Chairman of the Arbitral Tribunal acknowledged receipt of a communication from Claimant's Counsel, JUDr. [redacted], of the same date advising that he would be sending in the coming days a corrected version of the letter sent on 14 and 26 September 2011.
65. On 20 October 2011, the Arbitral Tribunal issued Procedural Order No.1. Procedural Order No.1 provides in relevant part:

3. PROVISIONAL TIMETABLE AND OTHER PROCEDURAL DIRECTIONS

3.1 The adoption of arbitral rules to govern the proceedings

66. Pursuant to Section 1042(3) of the German Arbitration Act 1998, the parties are free to determine the procedure themselves or by reference to a set of arbitration rules.

67. The 2010 UNCITRAL Arbitration Rules shall accordingly apply to the present proceedings.

3.2 Procedural Timetable

68. Claimant shall file its Statement on Claim on or before 1 November 2011, as directed in the Arbitral Tribunal's letter of 1 September 2011.
69. The present arbitration proceedings shall be split into a jurisdictional and merits phase.
70. Respondent shall file its Memorial on Jurisdiction within a 60-day time-limit from the date of the submission of Claimant's Statement of Claim.
71. Respondent shall submit any documentary evidence (including witness statements and expert reports) with its Memorial on Jurisdiction.
72. Claimant shall file its Answer to Respondent's Memorial on Jurisdiction within a 60-day time-limit from the date of the submission of Respondent's Memorial on Jurisdiction.
73. Claimant shall submit any documentary evidence (including witness statements and expert reports) with its Answer to Respondent's Memorial on Jurisdiction.
74. Any request by a party for the production of documents which are in another party's possession, custody or control shall first be addressed to such other party within a 7 day time-limit from the date of submission of Claimant's Answer to Respondent's Memorial on Jurisdiction. Documents which the requested party accepts to produce shall be produced within 4 days from the date of the request for the production of documents.
75. If the request is denied, the party seeking production may make a request to the Arbitral Tribunal to order the production within a 14 day time-limit from the date when the requested party should have produced the requested documents. Such request shall identify the individual documents, or a narrow and specific requested category of documents, in sufficient detail for such documents to be clearly recognized and described, and shall state why such documents are relevant and material to the outcome of the case and confirm that the documents are not in the possession, custody or control of the requesting party.
76. The Arbitral Tribunal shall, in its discretion, employ its best efforts to rule on the issue of production of documents, if possible, within a 7 day time-limit from the request to order the production of documents, taking account of the legitimate interests of the parties. The Arbitral Tribunal may, at its discretion, refer to the IBA Rules on the Taking of Evidence in International Arbitration as guidelines.
77. If a party, contrary to an order by the Arbitral Tribunal, fails to produce the documents without showing sufficient cause for such failure, the Arbitral Tribunal may draw from such failure any conclusion which it deems reasonable, in particular with respect to the content of such document.
78. Respondent shall file its Reply on Jurisdiction within a 30-day time-limit from the date of the actual or ordered production of the requested documents or the date of the decision of the Arbitral Tribunal refusing the request to order the production of documents.
79. Respondent shall submit any documentary evidence (including witness statements and expert reports) with its Reply on Jurisdiction.
80. Respondent shall not raise new factual and legal arguments in its Reply on Jurisdiction, unless such arguments respond directly to Claimant's Answer to Respondent's Memorial on Jurisdiction.
81. Claimant shall file its Rejoinder on Jurisdiction within a 30-day time limit from the date of the submission of Respondent's Reply on Jurisdiction.
82. Claimant shall submit any documentary evidence (including witness statements and expert reports) with its Rejoinder on Jurisdiction.

83. Claimant shall not raise new factual and legal arguments in the Rejoinder on Jurisdiction, unless such arguments respond directly to Respondent's Reply on Jurisdiction.
84. No new evidence shall be accepted from Respondent following the filing of Respondent's Reply on Jurisdiction and no evidence shall be accepted from Claimant following the filing of Claimant's Rejoinder on Jurisdiction (save in limited exceptional circumstances and with the leave of the Arbitral Tribunal).

3.3 Documentary evidence

85. All documentary evidence (including witness statements and expert reports) shall be submitted together with the parties' submissions. Claimants' documentary evidence shall be identified as C-1, C-2, etc. and Respondents' documentary evidence shall be identified as R-1, R-2, etc.
86. The exhibits submitted to the Arbitral Tribunal shall be accompanied by an updated list specifying the nature of each document, its date and its author.
87. Copies of pleadings, documents and witness/expert evidence as well as legal authorities should be provided in A5 format as well as on a USB stick.
88. All documents not drafted in English shall be produced together with an unofficial translation in English. Partial translations shall be acceptable, if only a part of document is relied upon.
89. All documents submitted to the Arbitral Tribunal shall be deemed authentic and complete, unless disputed by the other party. The Arbitral Tribunal shall decide on any objection to the authenticity or completeness of the exhibits.

3.4 Witnesses and experts

90. Each witness statement (including statements from the Parties and their representatives and persons who are affiliated with a party) shall be submitted to the Arbitral Tribunal together with any documentary evidence it relies upon.
91. Witness statements shall contain the name and address of the witness, his or her relationship to the party (if any) and description of his or her qualifications. All witness statements shall be signed and indicate the date and place of signature.
92. Each party may submit the evidence of one or more experts to the Arbitral Tribunal. The evidence shall be in the form of an expert report together with any documentary evidence it relies upon. Expert reports shall contain the name and address of the expert, his or her relationship to the party (if any) and description of his or her qualifications. All expert reports shall be signed and indicate the date and place of signature.
93. Each party shall be responsible for summoning their own witnesses and experts to the hearing. If a party's witness or expert fails to appear at the hearing without a valid reason, the Arbitral Tribunal can, in its discretion, disregard the witness statement or expert report.
94. The Arbitral Tribunal, regardless of the admissibility and taking of the evidence, shall freely assess all evidence, oral or written, submitted by the Parties.

3.5 Hearing

95. A hearing on jurisdiction, in which the Parties will present their oral pleadings and examine the witnesses and experts, will be held after Claimant files its Rejoinder on Jurisdiction. The dates and the organizational details of the hearing will be set by the Arbitral Tribunal and the Parties in due course.

3.6 Further proceedings

96. A calendar on the merits, if necessary, will be drawn up with the Parties in due course.

97. By communication dated 28 October 2011, Claimant provided its comments on Respondent's letter of 6 September 2011.

98. Claimant failed to submit its Statement of Claim on or before 1 November 2011.

99. By letter dated 2 November 2011, Respondent requested that the Arbitral Tribunal terminate the present arbitral proceedings pursuant to Article 30(1) of the 2010 UNCITRAL Arbitration Rules for the following reasons:

- Claimant was notified by the Arbitral Tribunal that if it failed to submit its Statement of Claim within the deadline set by the Arbitral Tribunal, the arbitral proceedings could be terminated. Claimant failed to submit its Statement of Claim by the imparted deadline;
- Claimant did not request an extension of time or explain its failure to submit its Statement of Claim;
- The Arbitral Tribunal stressed that the Statement of Claim would not be deemed to be submitted if Claimant failed to provide the Czech originals of both the First and Second Powers of Attorney. Claimant failed to provide the Czech originals of the First and Second Powers of Attorney by 1 November 2011. The document attached to JUDr. 's email dated 13 September 2011 cannot be the Czech version of the full power of substitution signed by Messrs. ' and ' because the English version is dated 24 August 2011; and
- None of the powers of attorney provided by Claimant comply with the directions of the Arbitral Tribunal set out in its letter dated 22 August 2011 or prove JUDr. 's or JUDr. 's capacity to act for Claimant in this arbitration.

100. In its letter dated 2 November 2011, Respondent further requested that Claimant be ordered to bear its own costs of the arbitration and to reimburse Respondent for the costs of the arbitration in the amount of CZK 7,958,422.13 pursuant to Article 42(1) of 2010 UNCITRAL Arbitration Rules and Article 9(2)(d) of the Treaty.

101. According to Respondent, its costs are reasonable given that it was forced to undertake independent investigation of a range of matters of fact and law relating to Claimant and its alleged investment in order to be able to defend itself against Claimant's unsubstantiated claims. Respondent asserts that its costs were further increased by Claimant repeatedly ignoring instructions from and deadlines imposed by the Tribunal.

102. Respondent further contends that the principle of "cost follow the event" should apply. In this regard, Respondent refers to Claimant's failure to duly pursue its alleged claim and to comply with the instructions provided and deadlines imposed on it by the Arbitral Tribunal.

103. By communication dated 18 November 2011, Claimant responded to Respondent's letter dated 2 November 2011 and requested that it be given time until the end of the year to file the Statement of Claim given that "*some events which I have written to you, working out the action, they made problems to me and also* ..." and that "[i]t is a very demanding work thanks to problems which are the focus of the proceeding arbitration."
104. By communication of the same day, Respondent objected to the requested extension and repeated its request that the Arbitral Tribunal immediately terminate the arbitral proceedings pursuant to Article 30(1) of the 2010 UNCITRAL Rules and order Claimant to pay the costs of this arbitration and Respondent's legal and other costs.
- 4. DECISION OF THE ARBITRAL TRIBUNAL**
- 4.1 Request for the termination of the present arbitral proceedings**
105. Section 1056 (2)(1)(a) of the ZPO provides that "*[t]he arbitral tribunal shall issue an order for the termination of the arbitral proceedings when the claimant fails to state his claim according to section 1046 subs. 1 and section 1048 subs. 4 does not apply.*"
106. Accordingly, the Arbitral Tribunal is entitled pursuant to Section 1056 (2)(1)(a) of the ZPO to issue a decision for the termination of the arbitral proceedings in the event that Claimant fails to bring its claims under Section 1046 (1) of the ZPO and no valid excuse has been provided under Section 1048 (4) of the ZPO.
107. Article 30(1) of 2010 UNCITRAL Arbitration Rules further states that "*[i]f within the period fixed by these Rules or the arbitral tribunal without showing sufficient cause, the claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.*"
108. At paragraph 7 of the minutes of the Procedural Meeting of 1 August 2011, the Arbitral Tribunal notified Claimant that if it failed to submit its Statement of Claim within the deadline set by the Arbitral Tribunal, the arbitral proceedings could be terminated.
109. Claimant, however, failed to submit its Statement of Claim by the imparted deadline of 1 November 2011 set out in the Arbitral Tribunal's letter of 1 September 2011 and in paragraph 34 of Procedural Order No.1.
110. Claimant did not request an extension of time before the deadline expired or offer any explanation for its failure to submit the Statement of Claim when the deadline expired.

111. The Arbitral Tribunal considers that Claimant has not provided, including in its letter received on 18 November 2011, a valid excuse pursuant to Section 1048 (4) of the ZPO or sufficient cause pursuant to Article 30(1) of 2010 UNCITRAL Arbitration Rules for its failure to submit the Statement of Claim before the expiry of the imparted deadline.
112. In light of the above, the Arbitral Tribunal accordingly decides that the present proceedings shall be terminated pursuant to Section 1056 (2)(1)(a) of the ZPO and Article 30(1) of 2010 UNCITRAL Arbitration Rules.

4.2 Request for an Award of Costs

113. The Arbitral Tribunal notes that Counsel for Claimant has not identified the Claimant as required under German law as the law of the seat of this arbitration (see German Supreme Court/BGH, Judgment of 21.1.2001-II ZR 331/00, published in NJW 2001, 1056, courtesy copy attached). The German Supreme Court requires an entity like Konsortium to provide exact details of the names and identities of the consorts, of the legal representatives and the name under which the entity is doing business. If the entity is not sufficiently identified or if there is not sufficient proof of its existence, the persons having commenced proceedings as representatives of the entity will be personally liable for costs.¹
114. The Arbitral Tribunal accordingly requests Claimant to identify the members of Konsortium Oeconomicus within 14 days from the date of the present Termination Decision.
115. The Arbitral Tribunal shall thereafter render its decision on the Award of Costs.
116. The Arbitral Tribunal would point out that, in the event that Claimant fails to identify the members of Konsortium Oeconomicus, the representatives of the Claimant shall be liable for the costs of the proceedings, if any, which Claimant may be ordered to bear.

¹ BGH, NJW 2001, 1056, 1060: "Im Aktivprozess der Gesellschaft ist es den für die Gesellschaft auftretenden Personen ohne weiteres zumutbar, die Gesellschaft - beispielsweise durch die möglichst exakte Bezeichnung der Gesellschafter, der gesetzlichen Vertreter und der Bezeichnung, unter der die Gesellschaft im Verkehr auftritt - identifizierbar zu beschreiben. Sollte sich im Verlauf des Prozesses herausstellen, dass tatsächlich keine Außengesellschaft existiert, müsste zumindest derjenige für die Prozesskosten aufkommen, der im Namen der vermeintlichen Gesellschaft den Prozess als deren Vertreter ausgelöst hat. Im Falle des Auftretens für eine nicht existierende Partei trägt der in deren Namen auftretende und die Existenz der Partei behauptende Vertreter als Veranlasser des unzulässigen Verfahrens die Prozesskosten (Senat, NJW-RR 1999, 1554 = LM H. 10/1999 § 50 ZPO Nr. 50 = ZIP 1999, 489 [491] m.w. Nachw.). Es ist also immer zumindest eine natürliche Person als Kostenschuldner vorhanden."

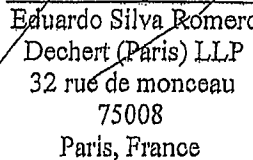
117. In light of the above, the Arbitral Tribunal hereby makes the following

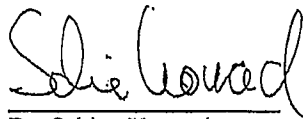
DECISION

118. The present proceedings are hereby terminated pursuant to Section 1056(2)(1) of the ZPO and Article 30(1) of 2010 UNCITRAL Rules of Arbitration.

119. An Award on the Costs incurred in relation to the present proceedings shall be rendered separately at a later juncture.

This Order for the Termination of the Proceedings is issued at the Place of Arbitration, Frankfurt am Main, Germany on 5 December 2011


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