

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE NO. 2010-13 / DUN-BZ

DUNKELD INTERNATIONAL INVESTMENT LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 8

30 March 2015

CONSIDERING:

- (A) The Parties' respective communications of 5 March 2015, requesting to introduce additional documents into the record;
- (B) Section 6 of the Tribunal's Order No. 7 of 11 March 2015;
 - 6. Cut-off for Additional Evidence
 - 6.1 The additional documentary evidence enclosed with the Parties' respective letters of 5 March 2015 is admitted to the record.
 - 6.2 Pursuant to the Parties' agreement, the documents disclosed in the response to the Parties' respective requests for the production of documents shall be considered to be part of the record and may be freely relied upon by either Party. The Parties shall confer with respect to the exhibit numbers to be assigned to such documents.
 - 6.3 Hereafter, additional documentary evidence will be admitted only in extraordinary circumstances and upon a showing of good cause.
- (C) The Respondent's letter of 25 March 2015, requesting leave to introduce an additional exhibit into the record in the form of a letter from counsel for the Claimant to the Government dated 9 June 2009 concerning the potential applicability of the Treaty to a dispute between the Parties concerning the Claimant's alleged interest in Telemedia;
- (D) The Respondent's argument that the "Respondent did not locate [the letter] until a few days ago, when it was discovered in the files of Mr. Gandhi," and that "given both the centrality of the migration issue and the Tribunal's ruling granting discovery requests regarding it (see, for example, Request Nos. 27-29)," the Claimant should have produced a copy of it;
- (E) The Respondent's argument that the letter constitutes a single document and is "well known to Claimant and its counsel and . . . does not inject any additional factual

subjects or legal theories into the case”, and that “[i]n the circumstances, the deeply probative value of the letter outweighs any prejudice to Claimant”;

- (F) The Claimant’s letter of 27 March 2015, opposing the Respondent’s application on the grounds that “the Application does not satisfy the high threshold for adducing evidence out of time in this arbitration, namely ‘extraordinary circumstances and upon a showing of good cause’”;
- (G) The Claimant’s argument that the letter “adds no new information about the timing of Dunkeld’s migration to the TCI”, does not “shed any light on the reasons for the Claimant’s migration to the TCI, which are already explained in some detail”, and that “the Government will have ample opportunity to test the evidence on the Migration Objection at next month’s hearing, and can do so without the Letter”;
- (H) The Claimant’s argument that there are no extraordinary circumstances as the letter was in the Government’s possession for over five years, was provided to persons other than Mr. Ghandi, and was referenced in subsequent correspondence from the Claimant;
- (I) The Claimant’s argument, with respect to the production of documents that it was “not under an obligation to disclose any documents that are already in the possession, custody or control of the requesting party” and that this was made clear in the course of communications during the document production phase;
- (J) That based on the record before it, the Tribunal does not see that the Respondent could not reasonably have located the document in question earlier and introduced it in connection with its written submissions or otherwise prior to the cut-off set out in the Tribunal’s Order No. 7;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The Respondent’s application to submit further documentary evidence in the form of the letter dated 9 June 2009 is **denied**.

On behalf of the Arbitral Tribunal,



Albert Jan van den Berg,
Presiding Arbitrator