

PCA Case No. 2016-12:

In the matter of an arbitration under the UNCITRAL Arbitration Rules 1976

- between -

1. **WCV WORLD CAPITAL VENTURES CYPRUS LTD**
2. **CHANNEL CROSSINGS LTD**

Claimants

v.

THE CZECH REPUBLIC

Respondent

FINAL AWARD

ARBITRAL TRIBUNAL

Juan Fernández-Armesto (President)
Stanimir Alexandrov
Marcelo Kohen

ASSISTANT TO THE TRIBUNAL

████████████████████

SECRETARY TO THE TRIBUNAL

████████████████████

26 July 2023

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ABBREVIATIONS AND ACRONYMS

1998 Amendment	Amendment No 149/1998 Coll, to Act No. 202/1990 Coll. on Lotteries and Similar Games
2004 Master Permit	Permit issued by the Ministry of Finance to Synot TIP on 26 July 2004 to operate a CLS network
2007 Master Permit	Permit issued by the Ministry of Finance to Synot TIP on 31 December 2007 to operate a CLS network
2011 Amendment	Amendment No 300/2011 Coll, to Act No. 202/1990 Coll. on Lotteries and Similar Games
2011 Decisions	The Chrastava, Františkovy Lázně and Kladno Decisions of the Czech Constitutional Court
2013 Decision	Decision of the Czech Constitutional Court on the constitutional complaint raised by the municipality of Klatovy
2017 Master Permit	Permit issued by the Ministry of Finance to Synot TIP on 22 November 2017 to operate a CLS network
Administrative Costs	Fees and expenses of the arbitrators and the PCA's administrative fees and expenses
Art(s).	Articles(s)
BIT or Treaty	Bilateral investment treaty, specifically the Agreement between the Czech Republic and the Republic of Cyprus for the Promotion and Reciprocal Protection of Investments, 15 June 2001
C I	Claimants' Statement of Claim, 27 May 2016
C II	Claimants' Reply on Liability and Counter-Memorial on Non-Bifurcated Jurisdictional Objection, 16 February 2021
CCL	Channel Crossings Ltd
CJEU	Court of Justice of the European Union
Claimants	WCV World Capital Ventures Cyprus Ltd and Channel Crossings Ltd
CLS	Centralized Lottery System
Costs of Arbitration	Fees and expenses of the arbitrators, the PCA and the those incurred by the Parties for their defense in the arbitration
C-PHB	Claimants' Post-Hearing Brief
C-SC	Claimants' Submission on Costs (C-114)
CZK	Czech Koruna
DAA	Dutch Arbitration Act
Decrees or GBDs	Decrees issued by the municipalities of the Czech Republic regulating CLS and LLS devices
Department 34	Department on State Supervision of Gambling and Lotteries
Doc. CL-x	Claimants' legal authorities
Doc. C-x	Claimants' factual exhibits
Doc. RL-x	Respondent's legal authorities

Doc. R-x	Respondent's factual exhibits
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ER	Expert Report
EU	European Union
EU Treaties	Treaty on the European Union and Treaty on the Functioning of the European Union
EUR	Euro
Exclusivity Representation	Claimants' expectation that the Ministry of Finance was the sole exclusive regulator for the Terminals
FET	Fair and equitable treatment
First Interim Award	Interim Award on Jurisdiction, issued on 25 April 2018
FPS	Full protection and security
Gaming Act	Act on Games of Chance dated 26 May 2016
Gaming Devices	CLS and LLS devices
Hearing	Evidentiary Hearing held on 13-18 June 2022 in Paris
HT, Day x, p. x, l. x	Hearing Transcript, Day, Page, Line
H-M-x	Parties' demonstrative exhibits produced at the Hearing
IBA	The International Bar Association
Intra-EU Objection	Respondent's objection regarding the incompatibility of Art. 8 of the BIT with EU law
Legal Costs	Reasonable expenses incurred by the Parties for their defense in arbitration
LLS	Local Lottery System
Lotteries Act	Act No. 202/1990 Coll. on Lotteries and Similar Games
Municipalities Act	Czech Republic, Act No 128/2000 Coll, on Municipalities (as amended), 12 April 2000 (Doc. C-63)
New Exhibit Requests	Evidentiary Request filed by Respondent on 14 February 2022 (R-78)
OPC	The Office for the Protection of Competition
Operating Companies	Synot W and Synot TIP
Oral Closing Session	Virtual hearing held on 8 November 2022 where the Parties presented their closing statements
P(p).	Page(s)
Para(s).	Paragraph(s)
Parties	WCV and CCL, as Claimants and the Czech Republic as Respondent
Parties	WCV World Capital Ventures Cyprus Ltd, Channel Crossings Ltd and The Czech Republic
PCA	Permanent Court of Arbitration
PO	Procedural Order
R I	Respondent's Statement of Defense and Memorial on Non-Bifurcated Objections to Jurisdiction, 16 October 2018

R II	Respondent's Statement of Rejoinder on Liability and Reply on Non-Bifurcated Objection, 17 August 2021
Renewability Representation	Claimants' expectation that the 2007 Master Permit would be automatically renewed
Respondent, the Czech Republic, or the State	The Czech Republic, a sovereign State
RfA	Notice of Arbitration filed by WCV and CCL to the Czech Republic on 24 September 2015 and transmitted to the Arbitral Tribunal on 23 February 2016
R-PHB	Respondent's Post-Hearing Brief
R-SC I	Respondent's Submission on Costs (R-101)
R-SC II	Respondent's Response to Claimants' Submission on Costs (R-103)
Second Interim Award	Second Interim Award on Intra-EU Objection, issued on 29 September 2020
Synot Group	Group of six companies which holds investments in a wide range of sectors and which Claimants form part of
Synot Holding	Synot Holding s.r.o.
Synot TIP	Synot TIP, a.s.
Synot W	Synot W, a.s.
Terminals or IVT	Interactive Video Terminals
TEU	Treaty on the European Union
TFUE	Treaty on the Functioning of the European Union
TofA	Terms of Appointment
UNCITRAL Rules	Arbitration Rules of the United National Commission on International Trade Law, 15 December 1976
USD	United States Dollar
VCLT	Vienna Convention on the Law of Treaties
WCV	WCV World Capital Ventures Cyprus Ltd
WS	Witness Statement
WSM	Winning Slot Machine

TABLE OF CASES AND OTHER LEGAL MATERIALS

<i>Achmea</i>	<i>Slovak Republic v Achmea B.V</i> , Court of Justice of the European Union case C-284/16, Judgement dated 6 March 2018
<i>ADC</i>	<i>ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary</i> , ICSID Case No ARB/03/16, Award dated 2 October 2006 (Doc. CL-2)
<i>AES</i>	<i>AES Summit Generation Limited and AES-Tisza Erömu Kft v. The Republic of Hungary</i> , ICSID Case No. ARB/07/22, Award dated 23 September 2010
<i>AMCO</i>	<i>Amco Asia Corporation and others v. Republic of Indonesia</i> , ICSID Case No ARB/81/1, Award dated 20 November 1984 (1992) 89 ILR 368 (Doc. CL-270)
<i>Antin</i>	<i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v Kingdom of Spain</i> , ICSID Case No ARB/13/31, Award dated 15 June 2018 (Doc. CL-272)
<i>Apotex</i>	<i>Apotex Inc. v. United States of America</i> , ICSID Case No. ARB(AF)/12/1, Award on Jurisdiction and Admissibility dated 14 June 2013 (Doc. RL-35)
<i>Aramco</i>	<i>Saudi Arabia v Arabian American Oil Company (Aramco) (1963)</i> 27 ILR 117 (Doc. CL-301)
<i>ATA Construction</i>	<i>ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan</i> , ICSID Case No ARB/08/2, Award dated 18 May 2010 (Doc. CL-273)
<i>Azurix</i>	<i>Azurix v. Argentine Republic</i> , ICSID Case No. ARB/01/12, Award dated 14 July 2006 (Doc. CL-6)
<i>BayWa R.E. Renewable Energy</i>	<i>BayWa R.E. Renewable Energy v. Kindgom of Spain</i> , ICSID Case No. ARB/15/16, Award dated 25 January 2021
<i>Berlington</i>	<i>Berlington v. Hungary</i> , Court of Justice on the European Union, Case C-98/14, Judgment (First Chamber) dated 11 June 2015
<i>Cairn Energy</i>	<i>Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India</i> , PCA Case No 2016-07, Award dated 21 December 2020 (Doc. CL-274)
<i>Chevron</i>	<i>Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador</i> , UNCITRAL, PCA Case No. 34877, Partial Award on the Merits dated 30 March 2010 (Doc. CL-279)
<i>CME</i>	<i>CME Czech Republic B.V. v The Czech Republic, (UNCITRAL) Partial Award, 13 September 2001</i> (Doc. CL-13)
<i>Crystallex</i>	<i>Crystallex International Corporation v. Bolivarian Republic of Venezuela</i> , ICSID Case No ARB(AF)/11/2, Award dated 4 April 2016 (Doc. CL-16)

<i>Czech Constitutional Court Award 1</i>	Czech Republic, Constitutional Court Award, Ref No PI ÚS 29/10 [Chrastava] dated 14 June 2011 (Doc. C-26)
<i>Czech Constitutional Court Award 2</i>	Czech Republic, Constitutional Court Award, Ref No PI ÚS 56/10 [Františkovy Lázně] dated 7 September 2011 (Doc. C-27)
<i>Czech Constitutional Court Award 3</i>	Czech Republic, Constitutional Court Award, Ref No PI ÚS 22/11 [Kladno] dated 27 September 2011 (Doc. C-147)
<i>Czech Constitutional Court Award 4</i>	Czech Republic, Constitutional Court Award, Ref No PI ÚS 6/13 [Klatovy] dated 2 April 2013 (Doc. C-30)
<i>ECE</i>	<i>ECE Projektmanagement International GmbH and Kommanditgesellschaft Panta Achtundsechzigste Grundstücksgesellschaft mbH & Co v. The Czech Republic</i> , UNCITRAL, PCA Case No 2010-5, Award dated 19 September 2013 (Doc. CL-236)
<i>EDF</i>	<i>EDF (Services) Limited v. Romania</i> , ICSID Case No ARB/05/13, Award dated 8 October 2009 (Doc. CL-22)
<i>El Paso</i>	<i>El Paso Energy International Company v The Argentine Republic</i> , ICSID Case No ARB/03/15, Award dated 31 October 2011 (Doc. CL-25)
<i>Electrabel</i>	<i>Electrabel S.A. v Republic of Hungary</i> , ICSID Case No ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability dated 30 November 2012 (Doc. CL-23)
<i>Elettronica Sicula</i>	<i>Elettronica Sicula S.p.A. (ELSI) (USA v. Italy)</i> [1989] ICJ Reports 15 (Doc. CL-24)
<i>Enron</i>	<i>Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. The Argentine Republic</i> , ICSID Case No ARB/01/3, Award dated 22 May 2007 (Doc. CL-26)
<i>Eskosol</i>	<i>Eskosol S.p.A. in liquidazione v. Italian Republic</i> , ICSID Case No. ARB/15/50, Decision on Italy's Request for Immediate Termination and Italy's Jurisdictional Objection based on Inapplicability of The Energy Charter Treaty to Intra-EU Disputes, dated 7 May 2019 (Doc. RL-215)
<i>Frontier Petroleum</i>	<i>Frontier Petroleum Services Ltd. v. The Czech Republic</i> , UNCITRAL, Final Award dated 12 November 2010 (Doc. CL-29)
<i>GPF Gp S.á.r.l</i>	<i>GPF Gp S.á.r.l v Republic of Poland</i> , SCC Case No. V 2014/168, Judgment of the UK High Court on the Set Aside Application of 2 March 2018 (Doc. CL-241)
<i>Helnan</i>	<i>Helnan International Hotels A/S v. Arab Republic of Egypt</i> , ICSID Case No ARB/05/19, Award dated 3 July 2008 (Doc. RL-36)
<i>Infinito Gold</i>	<i>Infinito Gold Ltd. v. Republic of Costa Rica</i> , ICSID Case No. ARB/14/5, Award dated 3 June 2021 (Doc. RL-303)

<i>Jan Oostergetel</i>	Jan Oostergetel and Theodora Laurentius v. Slovak Republic, UNCITRAL, Final Award dated 23 April 2012 (Doc. RL-37)
<i>Lemire</i>	<i>Joseph Charles Lemire v. Ukraine</i> , ICSID Case No ARB/06/18, Decision on Jurisdiction and Liability dated 14 January 2010 (Doc. CL-39)
<i>Loewen</i>	<i>Loewen Group, Inc. and Raymond L. Loewen v. United States of America</i> , ICSID Case No. ARB(AF)/98/3, Award dated 26 June 2003 (Doc. RL-25)
<i>Magyar Farming</i>	<i>Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary</i> , ICSID Case No ARB/17/27, Award dated 13 November 2019 (Doc. CL-268)
<i>Mamidoil</i>	<i>Mamidoil Jetoil Greek Petroleum Products Societe S.A. v. Republic of Albania</i> , ICSID Case No. ARB/11/2, Award dated 30 March 2015 (Doc. RL-33)
<i>Manchester Securities</i>	<i>Manchester Securities Corporation v. Republic of Poland</i> , PCA Case No. 2015-18, Award dated 7 December 2018 (Doc. CL-290)
<i>McLachlan et al</i>	C. McLachlan, L. Shore & M. Weiniger, <i>International Investment Arbitration: Substantive Principles</i> , Oxford University Press, 2007 (Doc. RL-28)
<i>Merrill & Ring Forestry</i>	<i>Merrill & Ring Forestry L.P. v. The Government of Canada</i> , ICSID Case No UNCT/07/1, Award dated 31 March 2010 (Doc. CL-292)
<i>Metalclad</i>	<i>Metalclad Corporation v. The United Mexican States</i> , ICSID Case No ARB(AF)/97/1, Award dated 30 August 2000 (Doc. CL-43)
<i>Micula</i>	<i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v Romania</i> , ICSID Case No ARB/05/20, Final Award dated 11 December 2013 (Doc. CL-44)
<i>Mobil</i>	<i>Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic</i> , ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability dated 10 April 2013 (Doc. CL-293)
<i>MTD</i>	<i>MTD Equity Sdn Bhd & MTD Chile SA v. Republic of Chile</i> , ICSID Case No ARB/01/7, Award dated 25 May 2004 (Doc. CL-47)
<i>Occidental</i>	<i>Occidental Exploration and Production Company v. The Republic of Ecuador</i> , UNCITRAL, LCIA Case No UN3467, Award dated 1 July 2004 (Doc. CL-50)
<i>OKO Pankki</i>	<i>OKO Pankki Oyj and others v. Republic of Estonia</i> , ICSID Case No. ARB/04/6, Award dated 19 November 2007 (RL-175)
<i>Saluka</i>	<i>Saluka Investments B.V. v The Czech Republic</i> , UNCITRAL, Partial Award dated 17 March 2006 (Doc. CL-60)
<i>Silver Ridge Power</i>	<i>Silver Ridge Power BV v. Italian Republic</i> , ICSID Case No. ARB/15/37, Award dated 26 February 2021 (Doc. RL-310)

<i>Tecmed</i>	<i>Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States</i> ICSID Case No ARB (AF)/00/2, Award dated 29 May 2003 (Doc. CL-66)
<i>Total</i>	<i>Total S.A. v The Argentine Republic</i> , ICSID Case No ARB/04/1, Decision on Liability dated 27 December 2010 (Doc. CL-67)
<i>Un glaube</i>	<i>Marion Un glaube and Reinhard Un glaube v. Republic of Costa Rica</i> (ICSID Case No. ARB/08/1 and ARB/09/20), Award dated 16 May 2012 (Doc. RL-196)
<i>Vékony</i>	<i>Vékony v. Hungary</i> , European Court of Human Rights, no 65681/13, Judgment (Second Section) dated 13 January 2015

I. PERSONS INVOLVED IN THE ARBITRATION

1. THE PARTIES

1.1 CLAIMANTS

1. Claimants in this arbitration are WCV World Capital Ventures Cyprus Ltd and Channel Crossings Ltd [**“Claimants”**]. Both companies have their registered seats in Arch. Makariou III, 2, Atlantis Building, 3rd floor, Flat/Office 301 Mesa Geitonia 4000, Limassol, Republic of Cyprus.
2. Claimants are represented in this arbitration by the following party representative and counsel:

[REDACTED]
World Capital Ventures Cyprus Limited
Channel Crossings Limited
Spyrou Kyprianou 5
KRITON BUILDING, 1st Floor, Flat/Office 101
Mesa Geitonia
4001 Limassol
Cyprus

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Three Crowns LLP
104 Avenue des Champs-Élysées
75008 Paris
France

[REDACTED]
Bankside Chambers
New Zealand
Level 22 Shortland & Fort
88 Shortland Street
PO Box 1571
Auckland 1140

[REDACTED]
BARBORA SNABLOVÁ advokátní kancelář
Šítkova 1
110 00 Prague 1
Czech Republic

1.2 RESPONDENT

3. Respondent in this arbitration is the Czech Republic, a sovereign State [**“Respondent”**].
4. Respondent is represented in this arbitration by the following party representatives and counsel:

Ms. Martina Matejová
Mr. Jaroslav Kudrna
Ms. Tereza Ševčíková
Ministry of Finance
Letenská 15
118 10 Prague 1
Czech Republic

Prof. Eduardo Silva Romero
Ms. Audrey Caminades
Ms. Raphaelle Legru
Mr. Jago Chanter
Mr. Quentin Muron
Dechert (Paris) LLP
22 rue Bayard,
75008 Paris
France

Ms. Erica Stein
Stein Arbitration
Avenue Louise 65/11
1050 Brussels
Belgium

* * *

5. The Tribunal shall refer to WCV World Capital Ventures Cyprus Ltd, Channel Crossings Ltd and the Czech Republic jointly as the **“Parties”** and individually as a **“Party”**.

2. THE ARBITRAL TRIBUNAL

6. The Arbitral Tribunal was constituted as follows.
7. On 24 September 2015, Claimants appointed as arbitrator Mr. Stanimir A. Alexandrov, whose contact details are:

Dr. Stanimir A. Alexandrov
STANIMIR A. ALEXANDROV PLLC
1501 K Street NW, Suite C-072
20005 Washington, D.C.
United States of America



14. The contact details of the PCA are as follows:

PERMANENT COURT OF ARBITRATION

[REDACTED]

Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

[REDACTED] [REDACTED]

II. PROCEDURAL HISTORY

1. THE ARBITRATION AGREEMENT

15. Claimants initiated these arbitral proceedings pursuant to Art. 8 of the Agreement between the Czech Republic and the Republic of Cyprus for the Promotion and Reciprocal Protection of Investments, 15 June 2001 [the “**BIT**”], and Art. 3 of the Arbitration Rules of the United Nations Commission on International Trade Law, 15 December 1976 [the “**UNCITRAL Rules**”]. Art. 8(2) of the BIT provides as follows¹:

“Article 8

Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be settled, if possible, by negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months from the written notification of a claim, the investor shall be entitled to submit the case, at his choice, for settlement to:

(a) a court of competent jurisdiction or an administrative tribunal of the Contracting Party which is the party to the dispute,

or

(b) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention of the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965,

or

(c) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules,

or

(d) The Arbitration Institute of the Chamber of Commerce in Stockholm.

3. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation”.

¹ Doc. C-5.

2. PROCEDURAL RULES

16. The Parties have agreed for the 1976 UNCITRAL Rules² to govern these proceedings.
17. The Parties also agreed that the Arbitral Tribunal would take into consideration, as general guidelines, the International Bar Association [the “**IBA**”] Rules on the Taking of Evidence in International Arbitration adopted by the IBA Council on 29 May 2010, and the IBA Rules on Party Representation in International Arbitration adopted by the IBA Council on 25 May 2013³.

3. PLACE OF ARBITRATION AND LANGUAGE

18. The Parties agreed that the legal place of this arbitration is The Hague, the Netherlands⁴; and that the language to be used in the proceedings is English⁵.

4. APPLICABLE LAW

19. The Tribunal must decide this dispute in accordance with the BIT.

5. BIFURCATION OF THE PROCEDURE

20. On 24 September 2015, Claimants instituted this arbitration by serving Respondent a Notice of Arbitration [“**RfA**”]. On 29 July 2016, Respondent submitted its Memorial on Jurisdiction and Request for Bifurcation, asking the Tribunal to bifurcate the proceedings, to first adjudicate the following jurisdictional and admissibility objections:

Objection 1: whether Claimants had established a prima facie breach of the BIT or International Law;

Objection 2: whether this Tribunal has jurisdiction in light of the fact that this case is brought under an Intra-EU BIT;

Objection 3: whether the claims submitted in this arbitration have already been litigated before the Czech Courts;

Objection 4: whether the Czech Republic consented to a multi-party arbitration;

Objection 5: whether Claimants satisfy the nationality requirements of the BIT, in particular, whether they have their permanent seat in Cyprus; and

Objection 6: whether Claimants initiated this arbitration in bad faith.

² Communication R-1; Communication C-1.

³ TofA, para. 30.

⁴ Communication R-1; Claimants’ email of 26 February 2016.

⁵ Communication R-1; Communication C-1.

21. On 19 August 2016, Claimants submitted their Response to the Request for Bifurcation, requesting the Tribunal to dismiss Respondent's application to bifurcate the proceedings.
22. On 6 September 2016, the Tribunal issued its Decision on the Request for Bifurcation deciding to bifurcate the proceedings to address Objections 3 to 6 separately from Objections 1 and 2, which were joined to the merits phase.
23. After the Parties presented their corresponding submissions and a first hearing was held, on 25 April 2018, the Tribunal issued an Interim Award on Jurisdiction [**"First Interim Award"**], in which it entirely dismissed Objections 3 to 6 raised by Respondent and ordered the continuation of the arbitration.
24. On 4 June 2018, Respondent requested that the Arbitral Tribunal first decide on Objection 2 by bifurcating the proceedings, following the ruling of the Court of Justice of the European Union [**"CJEU"**] in Case C-284/16: *Slovak Republic v. Achmea B.V.* [the **"Achmea Judgment"**] of 6 March 2018. After hearing the Parties, on 14 August 2018, the Tribunal dismissed Respondent's request and instead decided to bifurcate Objections 1 and 2 and liability, which formed the second stage of the arbitration proceedings, from quantum.
25. On 31 January 2019, pursuant to a joint request from the Parties, the Tribunal decided to bifurcate the proceedings and first address Respondent's Intra-EU BIT Objection separately. After the Parties filed their submissions on the Intra-EU BIT Objection and a second hearing was held, on 29 September 2020, the Tribunal rendered its Second Interim Award [**"Second Interim Award"**], dismissing the Intra-EU Objection raised by Respondent.
26. Summing up, this arbitration has been divided into phases regarding:
 - Objections 3 to 6, which were dismissed by the Tribunal in its First Interim Award;
 - Intra-EU BIT Objection, which was dismissed by the Tribunal in its Second Interim Award;
 - Remaining Jurisdictional Objection and Liability, which is dealt with in the present award; and
 - Quantum of damages.

6. MAIN PROCEDURAL EVENTS RELEVANT TO THIS AWARD

27. The Tribunal set out a detailed procedural history in its First and Second Interim Awards. Therefore, this section is limited to the description of events that are essential to the current Final Award and events subsequent to the Second Interim Award.
28. On 24 September 2015, Claimants served on Respondent a RfA pursuant to Art. 8(2) of the BIT, and Art. 3 of the UNCITRAL Rules.

29. On 23 February 2016, Claimants transmitted to the Arbitral Tribunal the RfA.
30. On 27 May 2016, Claimants filed their Statement of Claim [“C I”] pursuant to Art. 18 of the UNCITRAL Rules.
31. On 31 May 2016, the Tribunal and the Parties signed the TofA, and on the same day, the Tribunal issued Procedural Order No. 1 [“PO 1”].
32. On 22 June 2016, Respondent submitted its Application for Stay whereby it requested the Tribunal to suspend the arbitration until the CJEU ruled on a preliminary ruling referred by the German Federal Court of Justice relating to the compatibility of arbitration agreements in intra-EU BITs and European Union [“EU”] Law.
33. On 6 July 2016, Claimants submitted a Preliminary Response to the Respondent’s Application, whereby they requested its dismissal. On 26 July⁶ and 4 August 2016⁷, the Parties filed two further submissions on this issue.
34. On 5 August 2016, Respondent filed its Memorial on Jurisdiction and Request for Bifurcation. The Memorial set out six legal grounds challenging the jurisdiction of the Arbitral Tribunal and/or the dismissal of Claimants’ claims.
35. On 23 August 2016, the Tribunal issued Procedural Order No. 2 [“PO 2”] with a Confidentiality Order establishing the regulation of the treatment of the documents and information presented in the arbitration.
36. On 26 August 2016, Claimants submitted their Response to the Request for Bifurcation, requesting the Tribunal to dismiss the Respondent’s application to bifurcate the proceedings.
37. On 6 September 2016, the Tribunal issued a Decision on the Request for Bifurcation, bifurcating the proceedings to address Objections 3 to 6 separately from Objections 1 and 2, which were joined to the merits phase.
38. On the same day, the Tribunal issued Procedural Order No. 3 [“PO 3”] dismissing the Application for Stay.
39. On 28 October 2016, Claimants submitted their Answer on Bifurcated Objections.
40. On 18 November 2016, Respondent presented its Reply on Bifurcated Objections, and on 9 December 2016, Claimants submitted their Rejoinder on Bifurcated Objections.
41. On 13 January 2017, the Tribunal issued Procedural Order No. 4 [“PO 4”] establishing the specific details of the evidentiary hearing on jurisdiction.

⁶ Respondent’s Reply on the Application for Stay.

⁷ Claimants’ Rejoinder on the Application for Stay.

42. On 16 to 18 January 2017, the Tribunal held the first hearing on jurisdictional issues.
43. On 8 June 2017, the Tribunal issued Procedural Order No. 5 [“**PO 5**”] establishing the specific details of the second evidentiary hearing on jurisdiction.
44. On 25 April 2018, the Tribunal delivered its First Interim Award rejecting Objections 3 to 6.
45. On 14 August 2018, the Tribunal decided to bifurcate Objections 1 and 2 together with liability from the quantum phase and established a new procedural calendar.
46. On 16 October 2018, Respondent submitted its Statement of Defense and Memorial on Non-Bifurcated Objections to Jurisdiction [“**R I**”].
47. On 23 January 2019, the Tribunal issued Procedural Order No. 6 [“**PO 6**”] deciding on document production requests.
48. On 21 February 2019, the Tribunal issued Procedural Order No. 7 [“**PO 7**”], whereby it bifurcated the Intra-EU Objection and suspended the main calendar.
49. On 6 May 2019, Claimants submitted their Counter-Memorial on the Intra-EU Objection. On 8 July 2019, Respondent submitted its Reply on the Intra-EU Objection, and on 17 September 2019, Claimants submitted their Rejoinder on the Intra-EU Objection.
50. On 2 December 2019, the Tribunal issued Procedural Order No. 8 [“**PO 8**”] establishing the specific details of the upcoming hearing on the intra-EU BIT objection raised by Respondent.
51. On 18 to 19 December 2019, the Tribunal held the hearing on the intra-EU BIT objection raised by Respondent.
52. On 29 September 2020, the Tribunal rendered its Second Interim Award, dismissing the Intra-EU Objection.
53. On 26 October 2020, the Tribunal requested that the Parties construct their proposed timetables for the next phase of the proceedings.
54. On 11 November 2020, the Tribunal issued Annex I Ter to PO 1 with the Procedural Timetable for the proceedings for one remaining non-bifurcated objection and liability.
55. On 16 November 2020, Respondent confirmed that it had no objection to the appointment of ██████████ as Assistant to the Tribunal. On 18 November 2020, Claimants confirmed that they had no objection to the appointment of ██████████ as Assistant to the Tribunal.
56. On 27 January 2021, the Tribunal issued a revised Procedural Timetable establishing an extension of two weeks for the submission of Claimants’ Reply on Liability and Counter-Memorial on the Non-Bifurcated Objection.

57. On 16 February 2021, Claimants submitted their Reply on Liability and Counter-Memorial on the Non-Bifurcated Jurisdictional Objection [**“C II”**].
58. On 17 August 2021, Respondent submitted its Statement of Rejoinder on Liability and Reply on Non-Bifurcated Objection [**“R II”**].
59. On 4 September 2021, Claimants submitted an application in Relation to Inadmissible Evidence and Argument in the Rejoinder and related testimonial and documentary exhibits.
60. On 13 September 2021, Respondent provided its response to Claimants’ Application in Relation to Inadmissible Evidence and Argument in the Rejoinder.
61. On 18 September 2021, the Tribunal rendered its decision, dismissing Claimants’ application and granting Claimants a right to submit additional factual and documentary evidence to address the five witness statements submitted by Respondent. The Tribunal also postponed the hearing on liability and the final jurisdictional objection scheduled for 11-15 October 2021.
62. On 20 September 2021, the Tribunal and the Parties held a pre-hearing conference.
63. On 11 October 2021⁸, Claimants submitted the Witness Statement of ██████████, the Second Witness Statement of ██████████, the Second Witness Statement of ██████████, the Third Witness Statement of ██████████, Exhibits⁹, resubmitted Exhibits¹⁰, and Legal Authorities¹¹.
64. On 25 October 2021, the Tribunal agreed on the possibility of holding the hearing on liability and the final jurisdictional objection on 13-18 June 2022.
65. On 4 November 2021, the Tribunal issued a revised Procedural Timetable for the last jurisdictional objection and liability stage of the proceedings.
66. On 1 February 2022, the Tribunal confirmed that the hearing scheduled for 13-18 June 2022 was to take place by videoconference.
67. On 14 February 2022 Respondent filed its Evidentiary Request in which it requested the Tribunal to strike certain documentary exhibits out of the record and to allow Respondent to file new documents in response to Claimants’ Submission of Evidence dated 11 October 2021¹². Respondent also requested authorization to file 90 new exhibits into the record in response to the new facts introduced with Claimants’ new witness statements [the **“New Exhibit Requests”**].
68. On 2 March 2022, Claimants provided their Answer to the Evidentiary Request¹³.

⁸ Communication C-91.

⁹ Docs. C-447 to C-505.

¹⁰ Docs. C-73, C-410, and C-427.

¹¹ Docs. CL-308 to CL-311.

¹² Communication R-78.

¹³ Communication C-98.

69. On 16 March 2022, Claimants, on behalf of the Parties, inquired about the possibility of holding the hearing scheduled for 13-18 June 2022 in-person in Paris.
70. On 18 March 2022, the Tribunal agreed on the in-person hearing in Paris scheduled for 13-18 June 2022¹⁴.
71. On 29 March 2022, the Tribunal rendered its decision¹⁵, striking out Doc. CL-310 from the record; rejecting Respondent's request to strike out Doc. C-505 from the record; granting Respondent the right to marshal the documents, which correspond to the New Exhibit Requests Nos. 1, 2-4, 5-8, 13 and 19-90 into the record; rejecting Respondent's New Exhibit Requests No. 9-12 and 14-18; and granting Claimants the right to submit the documents, which correspond to their New Exhibit Requests and the translation of Respondent's New Exhibit Request No. 13 into the record.
72. On 12 April 2022, Claimants provided their list of witnesses and experts of Respondent for cross-examination¹⁶. On the same date, Respondent provided its list of witnesses and experts of Claimants for cross-examination¹⁷.
73. On 15 April 2022, Claimants submitted additional Exhibits¹⁸. On the same date, Respondent submitted additional Exhibits¹⁹.
74. On 20 April 2022, Respondent submitted English translations of certain Exhibits²⁰. On 2 May 2022, Respondent submitted additional English translations of other Exhibits²¹.
75. On 10 May 2022, the Tribunal invited the Parties to confer upon the issues related to the hearing scheduled for 13-18 June 2022.
76. On 11 May 2022, Claimants, on behalf of the Parties, submitted a joint communication in relation to the hearing scheduled for 13-18 June 2022.
77. On 12 May 2022, the Tribunal and the Parties held a pre-hearing conference.
78. On 19 May 2022, Claimants submitted English translations of some Exhibits²².
79. On 24 May 2022, Claimants, on behalf of the Parties, submitted a joint communication together with an indicative hearing schedule prepared by the Parties.
80. On the same date, Claimants submitted English translations of other Exhibits²³.

¹⁴ Communication A-72.

¹⁵ Communication A-73.

¹⁶ Communication C-100.

¹⁷ Respondent's communication sent by email on 12 April 2022.

¹⁸ Communication C-101.

¹⁹ Communication R-79.

²⁰ Communication R-80.

²¹ Communication R-81.

²² Communication C-103.

²³ Communication C-104.

81. On 26 May 2022, Claimants, on behalf of the Parties, submitted a revised indicative schedule.
82. On 30 May 2022, the Tribunal issued Procedural Order No. 9 [“**PO 9**”] establishing the specific details of the upcoming hearing on liability and the final jurisdictional objection.
83. The evidentiary hearing [“**Hearing**”] took place on 13, 14, 15, 16, 17 and 18 June 2022 [REDACTED] Paris (France).
84. The following factual and expert witnesses attended the Hearing and were examined by counsel to the Parties:

Claimants’ fact witnesses

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Respondent’s fact witnesses

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Claimants’ Czech law expert

- [REDACTED]

Respondent’s Czech law expert

- [REDACTED]

Claimants’ regulatory expert

- [REDACTED]

Respondent’s regulatory expert

- [REDACTED]

85. The Parties produced demonstratives H-M-1 to H-M-7²⁴ at the Hearing.
86. The Hearing was recorded and transcribed, and the Parties and the Tribunal were provided with the Hearing transcript [**“HT”**].
87. At the end of the Hearing, the Parties and the Tribunal discussed the post-Hearing phase. The Parties and the Tribunal’s agreements were reflected in Procedural Order No. 10 [**“PO 10”**].
88. On 1 September 2022, the Parties sought leave from the Tribunal to submit an update on the available information regarding the status of the Municipal Court Proceedings in the Czech Republic²⁵. On 3 September 2022, the Tribunal admitted the document into the record²⁶.
89. The Parties filed their post-Hearing briefs on 18 October 2022 [the Tribunal shall refer to Claimants’ post-Hearing brief as **“C-PHB”** and to Respondent’s as **“R-PHB”**].
90. On 8 November 2022 the Tribunal and the Parties convened virtually for an **“Oral Closing Session”**.
91. The Parties produced two demonstratives²⁷ at the Oral Closing Session.
92. On 16 December 2022, Claimants submitted a communication to indicate the evidence in the record that was relevant to the Tribunal’s assessment of one aspect of the parties’ post-hearing submissions. On 13 January 2023, Respondent requested the Tribunal to exclude the referred communication from the record²⁸.
93. On 16 January 2023, the Tribunal struck the communication from the record²⁹.
94. The Parties filed their submissions on costs simultaneously on 20 January 2023³⁰ [the Tribunal shall refer to Claimants’ submission on costs as **“C-SC”** and to Respondent’s as **“R-SC I”**]³¹.
95. On 23 January 2023, Respondent requested permission from the Tribunal to submit a brief response to C-SC, as they considered it contained arguments on costs³². On 24 January 2023, the Tribunal authorized³³ Respondent to file a corresponding

²⁴ **“H-M-1”** – Claimant’s Opening Statement Presentation; **“H-M-2”** – Respondent’s Opening Statement Presentation; **“H-M-3”** – Roadmap for the presentation of [REDACTED] **“H-M-4”** – Presentation of [REDACTED]; **“H-M-5”** – Presentation of [REDACTED] **“H-M-6”** – Presentation of [REDACTED] and **“H-M-7”** – Respondent’s presentation with answers to the Tribunal’s questions.

²⁵ Doc. R-114_updated.

²⁶ Communication A-81.

²⁷ Claimants’ Presentation and Respondent’s Presentation.

²⁸ Communication R-100.

²⁹ Communication A-84.

³⁰ The Parties agreed to an extension of the deadline for the filing of the Submissions on Costs (see communication A-83).

³¹ Communications C-114 and R-101.

³² Communication R-102.

³³ Communication A-85.

submission in response to C-SC [the Tribunal shall refer to Respondent’s brief submission as “**R-SC II**”].

7. EVIDENCE

96. Claimants have marshalled the following evidence in the proceedings:

Factual exhibits	C-1 to C-548
Legal authorities	CL-1 to CL-309 and CL-311 to CL-312 ³⁴
Witness statements	██████ WS I, ██████ WS II, ██████ WS, ██████ WS I, ██████ WS II, and ██████ WS III
Expert reports ³⁵	██████ ER I, ██████ ER II, ██████ ER III, ██████ ER IV, Rea ER, ██████ ER I, and ██████ ER II

97. Respondent has submitted the following evidence in the course of the arbitration:

Factual exhibits	R-1 to R-348
Legal authorities	RL-1 to RL-328
Witness statements	██████ WS, ██████ WS, ██████ WS, ██████ WS, and ██████ WS.
Expert reports ³⁶	██████ ER, ██████ ER I, ██████ ER II, ██████ ER III, ██████ ER I, and ██████ ER II

98. The Arbitral Tribunal has reviewed and examined all the evidence submitted by both Parties and discussed it at length throughout this Award.

8. COSTS OF THE ARBITRATION

99. In accordance with TofA, the Parties were invited to establish a deposit for the Tribunal’s fees and expenses. The Parties deposited USD 800,000 each.

100. The costs of the arbitration shall be established in section VIII *infra*.

9. SIGNATURE OF THE AWARD

101. Art. 32.4 of the UNCITRAL Rules establishes that:

“4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature”.

102. Additionally, Art. 32.6 of the UNCITRAL Rules determines:

³⁴ The Tribunal struck Doc. CL-310 from the record (see communication A-73).

³⁵ Together with the evidence submitted in support of the ERs.

³⁶ Together with the evidence submitted in support of the ERs.

“6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal”.

103. The Parties have reached a mutual agreement that the award shall be executed by the members of the Arbitral Tribunal through wet-signed hardcopies³⁷. These wet-signed hard copies of the award will be promptly dispatched to the Parties at the addresses of their respective legal representatives, as identified in section I.1 *supra*. As a gesture of courtesy, the Parties will also receive an electronic copy of the present award via email.

³⁷ Claimants’ email of 12 July 2023 and Respondent’s email of 11 July 2023 in response to Communication P-27.

III. FACTUAL BACKGROUND

104. The Claimants are two limited liability companies incorporated in the Republic of Cyprus, which form part of a group of six companies [the “**Synot Group**”], which holds investments in a wide range of sectors (such as hospitality, software, real estate and gaming) in about 20 countries³⁸.
105. Between 2006 and 2009 Claimants acquired two Czech companies from other companies within the Synot Group:
- Synot W, a.s. [“**Synot W**”], created in December 1998 and based in Uhrské Hradiště, Czech Republic³⁹, a manufacturer and distributor of hardware and software for gaming devices; and
 - Synot TIP, a.s. [“**Synot TIP**”], established in October 2002 and also based in Uhrské Hradiště, Czech Republic⁴⁰, which operates sports betting, casino games, and lotteries games in the Czech Republic.

[Both companies will be jointly referred to as the “**Operating Companies**”]

106. From 2011 and 2013, a series of regulatory changes were made in the Czech gaming sector. Claimants have brought this arbitration, arguing that these reforms constitute breaches of the obligations assumed by Respondent in the BIT and have caused serious losses to the value of their direct and indirect shareholdings in the Operating Companies.
107. The Tribunal set out a detailed corporate history of the Synot Group, and particularly, how Claimants structured their investment in the Czech Republic, in its First Interim Award⁴¹. This section is therefore limited to the description of the facts of the case that are essential to the understanding of the current Final Award and Final Jurisdictional Objection.

1. THE GAMING DEVICES

108. In 2004 the Operating Companies began to manufacture, distribute, and operate two innovative gaming systems: a centralized lottery system [“**CLS**”] and a local lottery system [“**LLS**”].

[Both CLS and LLS devices will be jointly referred to as the “**Gaming Devices**”].

³⁸ Claimants’ Answer on Bifurcated Objections, para. 124.

³⁹ Doc. C-44.

⁴⁰ Doc. C-43.

⁴¹ First Interim Award, paras. 53-79.

A. CLS

109. The CLS system is operated via interactive video terminals [the “**IVTs**” or “**Terminals**”]. Players access and play games of chance through these Terminals⁴².
110. The Terminals are remotely operated and centrally administered through an internet-based network⁴³. Typically, there can be hundreds of Terminals connected to a single CLS network⁴⁴.
111. The novelty of the CLS lies in the connection to a central system. Unlike typical Winning Slot Machines [“**WSMs**”], Terminals are not stand-alone gaming devices. While an ordinary WSM is not connected to other slot machines, the CLS operates through a network of connected Terminals; the software generating the games displayed on each Terminal is centralized.

[for the purpose of brevity, the CLS/IVT system will simply be referred to as “**Terminal**”; a specific mention of CLS will be made only if there is a special need to do so].

B. LLS

112. The Operating Companies market and operate a second type of Gaming Device, the local lottery system or LLS. Its features place it somewhere between a WSM and a CLS: the LLS includes a set of inter-connected Terminals (usually three)⁴⁵, that are controlled by a control unit located on top; players play for prizes that accumulate across the connected Terminals⁴⁶.
113. The games displayed are installed directly in the Terminals and are not administered through a CLS (although the LLS transmits financial and accounting information to a central server).

2. THE REGULATION OF GAMING

114. Until 2017, games of chance were regulated in the Czech Republic by the Act No. 202/1990 Coll. on Lotteries and Similar Games [the “**Lotteries Act**”].
115. The Lotteries Act regulated any “lottery or similar game” involving the placement of a bet in return for a chance to win⁴⁷. The Lotteries Act contained a non-exhaustive list of “lotteries and similar games” falling within its scope, such as monetary lotteries, prize lotteries, raffles or sport betting⁴⁸.
116. The Lotteries Act was divided into an introductory provision and six parts:

⁴² ████████ WS I, para. 14.

⁴³ ████████ WS I, para. 14; ████████ WS I, para. 13.

⁴⁴ ████████ WS I, para. 15; ████████ WS I, para. 13.

⁴⁵ ████████ WS I, para. 26.

⁴⁶ ████████ WS I, para. 37.

⁴⁷ Doc. C-8, s. 1(1).

⁴⁸ Doc. C-8, s. 2.

- Parts One to Five covered each specific category of games, namely: (i) lotteries and raffles (Part One); (ii) winning slot machines (Part Two); (iii) fixed odds bets (Part Three); (iv) betting games in casinos (Part Four); and (v) horse betting (Part Five).
 - Part Six contained general, transitional, and concluding provisions.
117. One of the main requirements was the need to obtain a permit from a competent authority to operate any lottery or similar game⁴⁹. The Act conferred powers to grant these permits on three public bodies – the central Government, the regional authorities, and the municipalities – according to the following principles:
- For lotteries⁵⁰, the Ministry of Finance was the competent authority, if the prize exceeded CZK 200,000 (EUR 8,000)⁵¹; municipalities were competent for lotteries of lesser value⁵²;
 - For WSMs⁵³, the Ministry of Finance was only competent for machines operated in casinos or with a foreign currency⁵⁴; municipalities were competent for all other machines⁵⁵; the act also contained a specific authorization for municipalities to restrict the operation of slot machines to certain locations and times by issuing “general binding decrees” [the “**GBDs**” or “**Decrees**”]⁵⁶; and
 - Any other lotteries and games not expressly regulated under the Lotteries Act (often called “innominate games”) were licensed by the Ministry of Finance, pursuant to Section 50(3)⁵⁷.
118. Each competent authority was not only responsible for granting, amending or terminating the permit, but also for supervising the operator’s activities, including through physical inspections, the power to seize documents, impose fines and temporarily suspend the permit⁵⁸.

3. THE PERMITS

119. Terminals were first introduced in the Czech market in 2003⁵⁹. As the Lotteries Act did not expressly mention this novel system, it was not clear in which category it should fall, and which authority was competent to issue the relevant permits.

⁴⁹ Doc. C-8, s .4(1); [REDACTED] ER I, paras. 33-34.

⁵⁰ Doc. C-8, Part 1.

⁵¹ Doc. C-8, s .6(1).

⁵² Doc. C-8, s .6(1).

⁵³ Doc. C-8, Part 2.

⁵⁴ Doc. C-8, s .18(1).

⁵⁵ Doc. C-8, s .18(1). Save for machines operated directly by the municipalities, which are licensed by the regional authority.

⁵⁶ Doc. C-8, s .50(4); [REDACTED] ER I, para. 38.

⁵⁷ Doc. C-8, s .50(3).

⁵⁸ Doc. C-8, s .47(1).

⁵⁹ [REDACTED] WS I, para. 16. See also C I, para. 116.

120. The first permit for a Terminal was issued in 2003 by the Ministry of Finance to SAZKA, the former state-owned gaming entity⁶⁰. According to the testimony of ██████████, Deputy Minister of International Relations and Financial Policy, Terminals fell within the scope of Section 50(3) of the Lotteries Act as innominate games and, therefore, under the games that the Ministry of Finance was able to regulate and license⁶¹.
121. The decision to issue permits for Terminals was made by the Department on State Supervision of Gambling and Lotteries, known as Department 34 [**“Department 34”**]. According to ██████████, the practice of Department 34 was to issue
- a general Master Permit for the operation of a Terminal network, and then
 - subsidiary Location Permits for each Terminal connected, under the conditions established in the Master Permit⁶².

A. The 2004 Master Permit

122. On 26 July 2004, Synot TIP⁶³ received from the Ministry of Finance its first permit to operate a Terminal network [the **“2004 Master Permit”**]⁶⁴. Synot TIP later increased the number of Terminals that could operate under the 2004 Master Permit, by requesting and obtaining from the Ministry of Finance authorization to operate Terminals from additional locations [**“Location Permits”**]. Claimants aver that by the end of 2005 Synot TIP operated 180 Terminals, each with its Location Permit, on the basis of the 2004 Master Permit⁶⁵.
123. The 2004 Master Permit contained no expiration date; its language simply specified that the Ministry of Finance could “amend, change or cancel the permit under the terms and conditions stipulated in Section 43 of the [Lotteries Act]”⁶⁶. Section 43 provides for general conditions that permit the suspension, amendment, or cancellation of permits⁶⁷.

B. The 2007 Master Permit

124. On 31 December 2007 the Ministry of Finance replaced the 2004 Master Permit with a ten-year renewable permit [the **“2007 Master Permit”**], which now included new technical standards for Terminals⁶⁸. The Master Permit also included 465 Location Permits: it authorized Claimants to install Terminals belonging to that lottery system at certain gaming centers, whose names and addresses were included in a long list in Section 6 of the Master Permit. Under the 2007 Master Permit Synot

⁶⁰ Privatized in 1993.

⁶¹ ██████████ served as Deputy Minister for International Relations and Financial Policy within the Ministry of Finance. In this capacity, he oversaw the work of Department 34. See ██████████ WS I, para. 27.

⁶² ██████████ WS I, para. 27.

⁶³ At that time Synot LOTTO, a.s.

⁶⁴ Doc. C-7, p. 1.

⁶⁵ C I, para. 141.

⁶⁶ Doc. C-7, p. 4.

⁶⁷ Doc. C-8, s. 43 (1) through (7).

⁶⁸ Doc. C-17, p. 26; and ██████████ WS I, paras. 45, 47.

TIP continued its practice of applying for the issuance of additional Location Permits⁶⁹. Synot TIP by 2011 held Location Permits for more than 4,000 Terminals⁷⁰.

C. LLSs

125. LLSs entered the Czech market in 2008. Following the precedent of the Terminal networks, the Ministry of Finance decided that LLSs qualified as innominate games and that, accordingly, the Ministry had the power to issue the relevant permits under Section 50(3) of the Lotteries Act⁷¹. On 16 January 2009, Synot TIP received its first permit to operate five LLSs for a ten-year renewable period⁷².

4. CHANGE OF THE REGULATORY FRAMEWORK

126. While Synot TIP and the gaming industry expanded, critical opinions against the gaming industry and its potential harm to society became vocal⁷³.
127. In October 2009, the Chrastava municipality adopted a Decree limiting the operation of Terminals, arguing that they should be considered WSMs for purposes of the application of the Lotteries Act⁷⁴. The municipalities of Františkovy Lázně and Kladno issued similar Decrees in February⁷⁵ and July⁷⁶ 2010.
128. The Ministry of Internal Affairs – acting within its authority⁷⁷– suspended these Decrees and asked the Constitutional Court to declare them void.
129. Simultaneously, the municipalities also sought action in the Czech Parliament: in early 2010 Parliament adopted an amendment to Section 50(3) of the Lotteries Act, shifting the power to license lotteries and similar games not regulated under the Lotteries Act from the Ministry of Finance to the municipalities. The project, however, never came into force as the President of the Republic vetoed it⁷⁸.

A. The 2011 Decisions of the Constitutional Court

130. On 14 June, 7 September, and 27 September 2011 the Constitutional Court handed down its three decisions on the annulment of Decrees [the “**Chrastava**”⁷⁹, the “**Františkovy Lázně**”⁸⁰ and the “**Kladno Decisions**”⁸¹, jointly the “**2011 Decisions**”]. The Court found for the municipalities and upheld the constitutionality

⁶⁹ Doc. C-17, para. 4.

⁷⁰ [REDACTED] WS II, para. 46.

⁷¹ [REDACTED] WS I, para. 34.

⁷² Doc. C-118, paras. 3 and 25.

⁷³ R I, paras. 24-30.

⁷⁴ Doc. C-26.

⁷⁵ Doc. C-27.

⁷⁶ Doc. C-147.

⁷⁷ Docs. C-52; C-63; and [REDACTED] ER I, para. 10.

⁷⁸ Doc. C-134.

⁷⁹ Doc. C-26.

⁸⁰ Doc. C-27.

⁸¹ Doc. C-147.

of the three decrees that the Ministry of Finance had challenged. The Constitutional Court held the following:⁸²

- Municipalities were entitled in their territories to restrict the operation of games by issuing Decrees, pursuant to the provisions of the Lotteries Act and their power under the Municipalities Act to regulate “local issues of public order”;
- The municipalities’ right of self-governance prevailed over the rights acquired by the holders of existing permits to operate gaming devices, because operators are “on the edge of society” and so could be “deprived of their permits at any time”; and
- The Ministry of Finance must terminate permits to operate gaming devices that conflict with Decrees issued by municipalities which limit or prohibit such games.

B. The 2011 Amendment to the Lotteries Act

131. In October 2011, the Czech Parliament passed a law that significantly amended the Lotteries Act [the “**2011 Amendment**”]⁸³. The law contained the following changes affecting Terminals and LLSs:

- It introduced a definition of Terminals and LLSs⁸⁴;
- The authorization to issue permits for Terminals and LLSs continued to be entrusted to the Ministry of Finance; it provided, however, that municipalities were entitled to participate in the administrative proceedings relating to the issuance of permits, so that they could state their position “from the point of view of protection of local public order issues”⁸⁵;
- Section 50(4) was amended to expressly allow municipalities to issue Decrees prohibiting the placement of Terminals and of LLSs in their entire municipality or in parts thereof, or limiting their placement and times of operation⁸⁶; and
- It included Section 51(4), which was a transitional provision intended to temporarily grandfather permits issued prior to 1 January 2012: these permits would not be affected by newly enacted Decrees until 31 December 2014⁸⁷.

C. The 2013 Decision of the Constitutional Court

132. On 20 June 2012, the Constitutional Court received a constitutional complaint from the municipality of Klatovy, alleging that the Ministry of Finance had unlawfully interfered with its rights to self-governance by failing to cancel existing permits for

⁸² [REDACTED] ER I, para. 11.

⁸³ Doc. C-28.

⁸⁴ Doc. C-28, s. 2 (1).

⁸⁵ Doc. C-28, s. 45(3).

⁸⁶ Doc. C-138, Art. I(4).

⁸⁷ Doc. C-28, s. 51(4).

operation of Terminals previously issued by the Ministry under Section 50(3) of the Lotteries Act. The constitutional complaint included a motion by Klatovy to annul the new Section 51(4) of the Lotteries Act, *i.e.*, the transitional period inserted by the 2011 Amendment.

133. The Constitutional Court in a decision dated 2 April 2013 granted Klatovy's motion to annul this provision [the "**Klatovy**" or "**2013 Decision**"]⁸⁸.
134. The 2013 Decision examined whether the provision of Section 51(4) temporarily limited the right of municipalities to self-governance, by in turn limiting the power to regulate the operation of Terminals through Decrees⁸⁹. And it concluded, in accordance with its 2011 Decisions, that:
- The regulation of lotteries and similar games (including Terminals) in the territory of a municipality was a matter of local order and, as such, it fell within the right of self-government of municipalities enshrined in Arts. 8, 100(1) and 104(3) of the Constitution⁹⁰; and
 - The Court found that the transitory provision of Section 51(4) contravened the municipalities' constitutional right to self-governance, and therefore the Court annulled this provision⁹¹.

5. TERMINATION OF LOCATION PERMITS

A. Initial situation: 2011-early 2013

135. The 2011 Constitutional Court Decision had no immediate effect on Claimants' 2007 Master Permit, nor on the Location Permits issued under such Master Permit. But many municipalities started to issue Decrees regulating the operation of CLSs and LLSs in their territory. By 2019, 706 municipalities (out of 6528) had done so; and out of these, 439 municipalities fully prohibited the installation of Terminals⁹².
136. The effect of these Decrees on Synot TIP's business was not immediate, because Section 51(4) of the 2011 Amendment provided for a three-year transitional period that grandfathered existing Location Permits⁹³; and the Ministry of Finance did not commence any action to terminate Location Permits issued under Section 50(3), which were incompatible with subsequent Decrees⁹⁴.

B. Situation as of the 2013 Decision

137. The legal situation changed in April 2013, when the Constitutional Court issued its 2013 Decision, in which it found that Section 51(4) contravened the Czech

⁸⁸ Doc. C-30, paras. 1-4; and █████ ER I, para. 107.

⁸⁹ Doc. C-30, para. 26.

⁹⁰ Doc. C-30, paras. 32-33.

⁹¹ Doc. C-30, para. 44.

⁹² R II, para. 325; and C-PHB, para. 18.

⁹³ Doc. C-28, s. 51(4); C II, paras. 206 and 212; and R II, para. 403.

⁹⁴ R II, para. 403, referring to █████ WS, paras. 16-17 and 21.

Constitution⁹⁵. Since the transitional period was annulled, the Ministry of Finance became obliged to immediately start the administrative process of cancelling Location Permits which were in contradiction with Decrees⁹⁶. In the course of 2013 (*i.e.*, two years after the 2011 Decisions), Department 34 initiated the lengthy administrative process of revoking these permits⁹⁷, which permitted to appeal the initial administrative decision before the Ministry of Finance. Until the entire process was completed, the Location Permits remained in force and the Terminals could still be operated⁹⁸.

138. In practice, operators like Synot TIP benefitted from a transitional period of at least three years between the issuance of the 2011 Decisions by the Constitutional Court and their actual implementation, during which Terminals could be operated, even if they were in contradiction with a Decree⁹⁹.
139. Once the Location Permits had effectively been withdrawn by the Ministry of Finance, the Terminals had to be removed from the municipality where they were located; they could be relocated to a different municipality with no prohibitory Decree¹⁰⁰ – out of the 6,528 municipalities in the Czech Republic, only 439 had fully prohibited the installation of Terminals¹⁰¹.

C. Recourse to the Courts

140. Operators whose Location Permits were terminated by the Ministry of Finance were able to challenge the decision before administrative courts¹⁰².
141. Synot TIP commenced 129 cases in administrative courts, whose outcome so far can be summarized as follows¹⁰³:
 - In the period between 2015 to 2017, Synot TIP lost 14 cases;
 - Most of the other cases were withdrawn (except for 24 test cases); and
 - Out of these 24 test cases, the Courts rejected Synot TIP's claims in 18 and found for Synot Tip's in the 6 remaining cases, where the municipalities had failed to offer any rationale to support their Decrees.
142. The Location Permits could, however, not be reinstated, because by the time the administrative court decisions were issued the 2007 Master Permit had already expired¹⁰⁴.

⁹⁵ Doc. C-30, para. 44.

⁹⁶ R II, para. 234; and ██████████ WS, paras. 17-19.

⁹⁷ ██████████ WS, paras. 17-19.

⁹⁸ R II, para. 236; and ██████████ WS, para. 21.

⁹⁹ R II, para. 237.

¹⁰⁰ R II, para. 235.

¹⁰¹ C-PHB, para. 18.

¹⁰² HT, Day 3, p. 99, ll. 9-16 ██████████. See also C-PHB, para. 34.

¹⁰³ C-PHB, para. 34 and Doc. R-114 (updated).

¹⁰⁴ C-PHB, para. 34.

6. NEW GAMING LEGISLATION

143. The Lotteries Act has been replaced by a new law on gaming – the Act on Games of Chance [the “**Gaming Act**”] – which was adopted by the Czech Parliament on 26 May 2016 and came into effect on 1 January 2017¹⁰⁵. The law was formulated to introduce a modern and comprehensive gaming regulation¹⁰⁶.
144. The Gaming Act made a division of eight categories of gambling¹⁰⁷. The Gaming Devices fall within the category of “technical game”, which includes all types of games of chance that are operated by means of a technical device directly handled by betters¹⁰⁸. For these devices, the Gaming Act provides for separate Master Permits and Location Permits¹⁰⁹.
- The Master Permit is issued by the Ministry of Finance, which permits the operation of a specific game of chance, and is not attached to a specific address¹¹⁰;
 - The Location Permit is issued by municipalities, and it refers to a specific address; municipalities still maintain the power to issue Decrees to restrict or prohibit gambling within their territory, vested on them by the 2011 Constitutional Court Decisions¹¹¹.

2017 Master Permit

145. Synot TIP’s 2007 Master Permit was to expire on 31 December 2017¹¹², and before this happened Claimants applied for a new Master Permit, which was issued by the Ministry of Finance on 22 November 2017 and is valid until August 2023¹¹³ [the “**2017 Master Permit**”]. On 21 May 2021, this 2017 Master Permit was amended to include additional games¹¹⁴. By October 2021, Synot TIP operated 849 Terminals, situated at 24 locations throughout the Czech Republic, each benefitting from a Location Permit issued by the corresponding municipality¹¹⁵.
146. The 2017 Master Permit issued on 21 May 2021 also covered LLS devices, but Claimants aver that they do not operate any¹¹⁶.

¹⁰⁵ Doc. C-410.

¹⁰⁶ Doc. C-410; and ██████████ WS, para. 6.

¹⁰⁷ ██████████ WS I, para. 19.

¹⁰⁸ ██████████ WS I, para. 16.

¹⁰⁹ ██████████ WS I, para. 20. See also Doc. C-410.

¹¹⁰ Doc. C-410, Section 86. See also R II, para. 217.

¹¹¹ Doc. C-410, Section 97. See also R II, para. 217.

¹¹² ██████████ WS II, para. 51.

¹¹³ ██████████ WS II, para. 51; and Doc. C-423.

¹¹⁴ ██████████ WS I, para. 38; and Doc. R-182.

¹¹⁵ ██████████ WS III, para. 38.

¹¹⁶ ██████████ WS I, para. 40; and Doc. R-182.

IV. RELIEF SOUGHT

1. CLAIMANTS' PRAYERS FOR RELIEF

147. In their Statement of Claim, Claimants submitted the following request for relief¹¹⁷:

“On the basis of the foregoing, fully reserving their right to supplement or otherwise amend the present request for relief, the Claimants respectfully request that the Tribunal:

- (a) DECLARE that the Czech Republic has breached the Treaty;
- (b) ORDER the Czech Republic to compensate the Claimants for its breaches of the Treaty, in the principal amount of CZK3.6 billion, which amount is subject to revision closer to the time of the Tribunal's Award, in light of the continuing character of the Czech Republic's Treaty breaches, plus appropriate post-award interest until full payment of the award is made;
- (c) ORDER the Czech Republic to pay all of the costs and expenses of these arbitration proceedings, including the fees and expenses of the Tribunal, the PCA, the fees and expenses relating to the Claimants' legal representation, and the fees and expenses of any experts appointed by the Claimants or the Tribunal, plus interest; and
- (d) AWARD such alternative or additional relief as the Tribunal considers appropriate.

The Claimants reserve their right to supplement and expand upon the factual and legal claims, arguments and evidence they have submitted through this Memorial in the course of the proceedings”.

148. In their Reply on Liability and Counter-Memorial on Non-Bifurcated Jurisdictional Objection, Claimants submitted the following request for relief¹¹⁸:

“On the basis of the foregoing, the Claimants respectfully request that the Tribunal:

- (a) DISMISS the Respondent's Non-Bifurcated Objection;
- (b) DECLARE that it has jurisdiction over the Claimants' claims;
- (c) DECLARE that the Respondent has breached the Treaty; and
- (d) RESERVE all other matters, including reparation and costs, for the subsequent phase of the proceedings.

The Claimants reserve the right to amend and supplement their submissions, and the above request for relief”.

¹¹⁷ C I, paras. 391-392.

¹¹⁸ C II, paras. 554-555.

2. RESPONDENT’S PRAYERS FOR RELIEF

149. The Czech Republic presented its Statement of Defense and Memorial on Non-Bifurcated Objections to Jurisdiction, requesting the Tribunal to¹¹⁹:

“DECLARE that the Tribunal does not have jurisdiction over this matter;

or, alternatively,

DECLARE that the Czech Republic has not breached the Treaty; and

DISMISS all of Claimants’ claims in their entirety;

and, in any event,

ORDER Claimants to pay the costs of these proceedings, including the costs of arbitration and the legal and other costs incurred by the Czech Republic; and

ORDER Claimants to pay simple interest on any costs awarded to the Czech Republic at 3% from the date of the Award until payment”.

150. The Czech Republic submitted with its Rejoinder on Liability and Reply on Non-Bifurcated Objection, and its Post-Hearing Brief requests as formulated in their Statement of Defense and Memorial on Non-Bifurcated Objections to Jurisdiction¹²⁰.

¹¹⁹ R I, para. 632.

¹²⁰ R II, para. 578; and R-PHB, para. 100.

V. APPLICABLE LAW

151. The Tribunal will start by recalling its decision in the Second Interim Award regarding the law applicable to its own jurisdiction, and to the merits of the dispute.

1. LAW APPLICABLE TO JURISDICTION

152. The Tribunal's jurisdiction derives from the Parties' consent to arbitration expressed in the Czech Republic's standing offer to arbitrate contained in Art. 8 of the BIT, and Claimants' acceptance of the Republic's offer through the filing of the Notice of Arbitration¹²¹.

153. The Cyprus-Czech Republic BIT does not contain any rules as to the law to be applied by the Tribunal in relation to jurisdiction. However, since the BIT is an international treaty, its interpretation and the rules governing its application, invalidity, termination and suspension, are governed by the Vienna Convention on the Law of Treaties ["VCLT"].

154. Both the Czech Republic and the Republic of Cyprus are parties to the VCLT, and were already bound by it at the time of the entry into force of the BIT and the filing of the Notice of Arbitration¹²². The application of international law, and specifically of the rules contained in the VCLT, to a Tribunal's decision on jurisdiction, has also been upheld by numerous decisions of local courts¹²³, including by the Supreme Court of the Netherlands in other investment treaty cases having their seat in The Hague¹²⁴.

155. Furthermore, the TofA also provide for the application of international law. The TofA were signed by and are binding upon both Parties. They enshrine the Parties' choice of law:

Title IV regulates the "Applicable Substantive Rules", while

Title V regulates "Procedural Rules".

156. The relevant provisions read as follows:

¹²¹ Art. 3 of the UNCITRAL Rules.

¹²² Cyprus and the Czech Republic (Czechoslovakia) acceded to the VCLT on 28 December 1976 and 22 February 1993.

¹²³ See, e.g., Doc. CL-241, *GFP Gp S.á.r.l.*, para. 46 ("It is not in dispute between the parties that an arbitration agreement in a bilateral, or multilateral, investment treaty, although a separate agreement, is governed by international law"); and Doc. CL-253, *Occidental Exploration v. The Republic of Ecuador*, [2005] 2 Lloyd's Rep. 707 (CA), para. 33 ("Although it is a consensual agreement, it is closely connected with the international Treaty which contemplated its making, and which contains the provisions defining the scope of the arbitrators' jurisdiction. Further, the protection of investors at which the whole scheme is aimed is likely to be better served if the agreement to arbitrate is subject to international law, rather than to the law of the State against which an investor is arbitrating").

¹²⁴ Doc. CL-211, *Chevron*, para. 4.3 ("The court of appeal therefore rightly, and uncontested in cassation, answered the question of whether the arbitration tribunal is competent in this case based on the interpretation of Article VI BIT. Additionally the court of appeal rightfully found that this interpretation must be done in accordance with the rules laid down in Article 31 and 32 [VCLT] [...]").

“IV. Applicable substantive rules

28. The Tribunal shall decide the dispute in accordance with the BIT.

V. Applicable procedural rules, place of arbitration and language

1. Procedural rules and place of arbitration

29. The Parties have agreed to apply the 1976 UNCITRAL Arbitration Rules [UNCITRAL RULES]. The place of Arbitration is The Hague, Netherlands”.

[Emphasis in the original]

157. Title IV, which regulates “Applicable Substantive Rules”, in para. 28 mandates the Tribunal to “decide the dispute in accordance with the BIT”. Title V, on the other hand, only refers to “procedural rules”, and provides that procedure will be governed by the 1976 UNCITRAL Rules.
158. Questions concerning jurisdiction have a substantive rather than procedural character. The applicable rule is thus para. 28, which provides that disputes must be adjudicated “in accordance with the BIT”. The Parties have thus agreed that the preliminary dispute whether the Tribunal has or not jurisdiction, is to be decided by applying the BIT – an instrument of international law.

EU Treaties

159. The Treaty on the European Union [“TEU”] and the Treaty on the Functioning of the European Union [“TFEU”], jointly referred as to the “EU Treaties”] also form part of international law applicable between EU Member States. This conclusion is reflected in the well-known finding of the tribunal in *Electrabel*¹²⁵:

“EU law is international law because it is rooted in international treaties”.

160. As articulated in Art. 38(1)(a) of the Statute of the International Court of Justice, international law is comprised of international conventions “whether general or particular”. EU Treaties do not form part of general international law applicable to all States. The EU Treaties apply only to the signatories – the EU Member States – who have agreed to form part of the EU legal order; they establish an internal market, define the relationships between EU Member States and EU treaty bodies, and organize the functioning of the Union and its areas of competence¹²⁶.
161. The *Eskosol* decision accurately delineated the relationship between what it calls the overarching “international legal system” and various subordinated sub-systems of international law, governed by their own norms and subject to their own dispute resolution authorities¹²⁷:

“As a whole, the international legal system is bound by general principles of international law, i.e., by customary international law, including norms such

¹²⁵ Doc. CL-23, *Electrabel*, para 4.120.

¹²⁶ TFEU, Art. 1.

¹²⁷ Doc. RL-215, *Eskosol*, para. 181.

as *jus cogens* and *pacta sunt servanda* as discussed above. But below this level of general principles there exist various sub-systems of international law, with no precise hierarchy between the different norms established in each sub-system. Rather, each of these sub-systems is governed by its own applicable norms, and vests dispute resolution authority in particular bodies obligated to proceed under those norms. The EU Treaties are one such sub-system, vesting authority in various organs including the Commission, the CJEU, etc. But the EU Treaties are not general international law displacing all other sub-systems of international law; rather, they exist side-by-side with other sub-systems, including those created by various multilateral treaties".

[Emphasis added]

162. EU law and international investment protection law are sub-systems of international law, existing side-by-side, without a precise hierarchy between both, governed by their own treaties and subject to their distinct dispute resolution authorities.
163. Since both the BIT and the EU Treaties are international conventions, the international law rules on the termination of treaties and application of successive treaties regulate their reciprocal application; these rules can have an impact on the validity or enforceability of the BIT, on the Czech Republic's consent to arbitration and ultimately on the jurisdiction of this Tribunal – as will be further discussed when the Tribunal analyses the Intra-EU Objection.

Dutch law

164. Dutch law is the law of the place of arbitration, a place which was selected by agreement among the Parties in Title V of the TofA.
165. The Tribunal disagrees with Respondent's contention that the Parties, through their choice of The Hague as the *lex loci arbitri*, tacitly chose Dutch law to govern issues of jurisdiction¹²⁸.
166. First, for an implicit choice to be considered, there must be no explicit choice made by the Parties. In the current case, the Parties explicitly agreed in the TofA for the BIT to govern the substantive aspects of the dispute, including the Tribunal's jurisdiction.
167. Second, if it is accepted *arguendo* that the Parties have failed to designate the applicable law (*quod non*), then the power to do so is vested with the arbitral tribunal, as provided for in Art. 1054 of the Dutch Arbitration Act [**"DAA"**]:¹²⁹

"Article 1054

(1) [...]

(2) If a choice of law has been made by the parties, the arbitral tribunal shall decide in accordance with the rules of law designated by the parties. Failing

¹²⁸ HT on EU Objection, Day 1, p. 21, ll. 4-6, and 10-13 (Professor Van Zelst).

¹²⁹ Doc. RL-8.

such designation of law, the arbitral tribunal shall decide in accordance with the rules of law which it considers appropriate”.

[Emphasis added]

168. This is consonant with Art. 33 of the 1976 UNCITRAL Rules:

“1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable”.

169. Pursuant to the text of the DAA and the UNCITRAL Rules, absent a choice of law agreed upon by the Parties, the arbitral tribunal is to decide in accordance with the law which it considers “appropriate” or “determined by the conflict of laws rules which it considers applicable”.

170. In this case, the Arbitral Tribunal would unhesitatingly select the BIT and international law as the most appropriate rules of law to govern the substance: the Parties’ consent to arbitration is formalized in the BIT, the standards of protection offered to Claimants’ investment in the Czech Republic are defined in the BIT, and the legal nature of the BIT is that of an international treaty ruled by international law. Likewise, international law, including the BIT as interpreted and applied in accordance with the VCLT, constitutes the law which is applicable to an investment treaty arbitration such as this one, as has been confirmed by the Supreme Court of the Netherlands among many others (see para. 154 *supra*).

2. LAW APPLICABLE TO THE MERITS

171. Art. 8(1) of the BIT defines the scope of disputes which a protected investor may submit to arbitration:

“Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connections with an investment in the territory of the other Contracting Party [...]”.

172. In the present case, Claimants allege that measures adopted by the Czech Republic have resulted in a breach of the rights granted and the guarantees provided under the BIT, and not under any other body of law. Therefore, to decide Claimants’ claims, the Tribunal must interpret and apply the BIT.

173. The question of the law applicable to the adjudication of these disputes has been agreed upon by the Parties: para. 28 of the TofA explicitly states that the

“Tribunal shall decide the dispute in accordance with the BIT”.

174. The Parties’ choice is binding upon the Tribunal, as provided for in Art. 33 of the 1976 UNCITRAL Rules:

“1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. [...]”.

175. The Tribunal has thus been entrusted with the task of resolving the dispute before it by deciding whether the Czech Republic has breached any of the rights granted and guarantees made to Claimants under the BIT.

The VCLT and customary international law

176. The Parties' consent refers explicitly to the BIT, an instrument of international law, but it implicitly extends to general international law, including the VCLT and customary international law.
177. This was the conclusion reached in *ADC v. Hungary*¹³⁰:

“In the Tribunal’s view, by consenting to arbitration under Article 7 of the BIT with respect to ‘Any dispute between a Contracting Party and the investor of another Contracting Party concerning expropriation of an investment...’ the Parties also consented to the applicability of the provisions of the Treaty [...]. Those provisions are Treaty provisions pertaining to international law [...]. The consent must also be deemed to comprise a choice for general international law, including customary international law, if and to the extent that it comes into play for interpreting and applying the provisions of the Treaty [...]”.

[Emphasis added]

178. A similar analysis may be found in *MTD v. Chile*, where the tribunal held the following¹³¹:

“This being a dispute under the BIT, the parties have agreed that the merits of the dispute be decided in accordance with international law”.

179. And that:

“[...] the parties have agreed to this arbitration under the BIT. This instrument being a treaty, the agreement to arbitrate under the BIT requires the Tribunal to apply international law”.

Municipal law

180. Municipal law in this case includes Czech law and certain rules of EU law, which have been incorporated into and form part of Czech law, or which have a direct effect within the Czech Republic, without need for formal incorporation¹³².
181. The Tribunal’s task is limited to establishing whether any measure adopted by the Czech Republic and affecting a Cypriot investor amounts to a breach of the rights granted and guarantees promised in the BIT.
182. The Tribunal is not empowered to interpret or apply Czech or EU law, nor to establish the legality of measures adopted by the Czech Republic under its domestic

¹³⁰ Doc. CL-2, *ADC*, para. 290.

¹³¹ Doc. CL-47, *MTD*, paras. 86–87.

¹³² Doc. RL-182, *AES*, para. 7.6.6.

legal order. The Tribunal is additionally not entitled to judge the Republic's compliance with its obligations under the TEU or the TFEU, nor is it being requested to do so by Claimants. In its assessment of whether a breach of the Treaty has occurred, the Tribunal will treat municipal law as a fact¹³³, and will follow the prevailing interpretation given to the municipal law by the courts and authorities of the Czech Republic and the EU.

183. The Tribunal cannot, and will not, *sua sponte* interpret or develop Czech law or EU law; any attempt to do so would exceed the Tribunal's jurisdiction.

¹³³ Doc. CL-25, *El Paso*, paras. 135 and 141; and Doc. CL-6, *Azurix*, para. 67.

VI. FINAL JURISDICTIONAL OBJECTION

184. The Tribunal has already extensively dealt with five out of six jurisdictional objections raised by the Czech Republic¹³⁴. The latest non-bifurcated jurisdictional objection which must be addressed at this stage is whether this Tribunal should decline to hear the case, because otherwise it would be acting as a super-constitutional court¹³⁵.

1. RESPONDENT'S POSITION

185. Respondent submits that Claimants' claim comes down to a challenge to the decisions of the Czech Constitutional Court on Czech law and that the Tribunal has no jurisdiction to sit as a court of appeals¹³⁶. The principle that an international tribunal may not sit as a court of appeals from a judgment of a domestic court has long been recognized by international tribunals¹³⁷.

186. According to Respondent, Claimants, based on [REDACTED] legal opinion, seek appellate review of the decisions of the Czech Constitutional Court on Czech law with which they disagree. In particular, Claimants are trying to reconsider the Czech Constitutional Court's holdings that¹³⁸:

- Synot TIP had acquired no rights;
- Municipalities were permitted to regulate gambling; and
- The Czech Constitutional Court may issue orders to enforce its judgments.

2. CLAIMANTS' POSITION

187. Claimants contend that Respondent mischaracterizes their case. The nature of their claims is not that the Czech Constitutional Court was wrong as a matter of Czech law, as submitted by Respondent, but that the decisions of the Czech Constitutional Court, along with the conduct of other State organs, violated the Republic's obligation to grant Claimants fair and equitable treatment¹³⁹; their claim is within the jurisdiction of the Tribunal because they request the Tribunal to assess the decisions of the Czech Constitutional Court in light of international law¹⁴⁰.

188. Claimants submit that none of the legal authorities cited by Respondent supports the view that an investment tribunal constituted under a bilateral investment treaty

¹³⁴ See Second Interim Award.

¹³⁵ C II, paras. 550-553; R I, paras. 317-365.

¹³⁶ C I, paras. 14-15; and R I, paras. 341-362.

¹³⁷ See R I, paras. 344-347.

¹³⁸ R I, paras. 353-362.

¹³⁹ Response to Request for Bifurcation, paras. 23-25. See also C II, paras. 551-553.

¹⁴⁰ C II, para. 552, citing Doc. CL-290, *Manchester Securities*, paras. 383-384.

“lacks jurisdiction to consider whether the conduct or decisions of a domestic court amount to a breach of the treaty”¹⁴¹.

3. DECISION OF THE TRIBUNAL

189. The Parties devote little attention to this last jurisdictional objection, but in essence:

- The Czech Republic argues that this Tribunal lacks jurisdiction because if it decided the case, it would impermissibly act as a court of appeal on Czech domestic law¹⁴²; while
- Claimants say that the Czech Republic’s position is mistaken and that this is not a matter of jurisdiction, but rather of the standard of review under international law of the decisions of the Czech Constitutional Court¹⁴³.

190. The Tribunal sides with Claimants and confirms that it has jurisdiction over the present dispute.

191. Contrary to Respondent’s assertions, the jurisdiction of this Tribunal is exclusively limited to establishing whether the Czech Republic has breached the BIT by any measure adopted by any of its organs and for which it assumes responsibility under international law. The Tribunal is not empowered to assess the legality of measures adopted by the Czech Republic under its domestic legal order. In its assessment of whether a breach of the Treaty has occurred, the Tribunal will, as it must, treat municipal law as a fact, and will follow the prevailing interpretation given to the municipal law by the courts and authorities of the Czech Republic¹⁴⁴. The Tribunal cannot, and will not, review or second-guess the decisions of the Czech Constitutional Court; any attempt to do so would exceed the Tribunal’s jurisdiction.

* * *

192. Therefore, the Tribunal dismisses the Czech Republic’s pending objection, and declares that it has jurisdiction to hear the present dispute.

¹⁴¹ C II, para. 551, citing Doc. RL-33, *Mamidoil*, para. 764; Doc. RL-35, *Apotex*, para. 278; Doc. RL-36, *Helnan*, para. 106; Doc. RL-37, *Jan Oostergetel*, para. 291; Doc. RL-25, *Loewen*, para. 242; R. Dolzer & C. Schreuer, *Principles of International Investment Law*, Second Edition, Oxford University Press, Chapter VII, Part 4 (RL-34), p. 182; and Doc. RL-28, McLachlan et al, paras. 7.78-7.79.

¹⁴² R II, paras. 361-366.

¹⁴³ C II, paras. 550-553.

¹⁴⁴ Doc. RL-36, para. 106: “*An ICSID Tribunal will not act as an instance to review matters of domestic law in the manner of a court of higher instance. Instead, the Tribunal Will accept the findings of local courts [...]*”.

VII. MERITS

193. Claimants allege that Respondent has failed to accord:

- fair and equitable treatment [“FET”], and
- full protection and security [“FPS”]

to their investments in breach of Art. 2(2) of the BIT, which establishes¹⁴⁵:

“Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party”.

194. The Tribunal will first analyze the arguments concerning the violation of the FET standard (VII.1) and will then turn to the analysis of the alleged breach of the FPS standard (VII.1.3).

VII.1. FAIR AND EQUITABLE TREATMENT

195. In essence, Claimants say that prior to 2011, the regulatory framework for Gaming Devices was designed to be stable¹⁴⁶. At that time, the regime was characterized by the issuance of long-term Master and Location Permits by the Ministry of Finance¹⁴⁷. For Claimants, the principal regulatory change was the Constitutional Court 2011 and 2013 Decisions, which expanded the regulatory power of municipalities, allowing them to control not only classic slot machines but also the Gaming Devices¹⁴⁸.

196. Claimants further say that since then, operators have been faced with a barrage of arbitrary and incoherent Decrees, that led to the premature termination of hundreds of Location Permits without respecting acquired rights not granting adequate transitory provisions¹⁴⁹. Under the new Gaming Act, Claimants consider that operators fare no better: they operate in a climate of hopeless uncertainty, without knowing when or why municipalities will exercise their discretion to regulate by Decree. There has been an unprecedented and unprincipled upheaval in the regulatory framework of Terminals and LLSs¹⁵⁰.

197. Respondent, in turn, is of the view that the investors are simply displeased with the evolution of the business environment in the gambling sector in the Czech Republic and seek to convert the investment arbitration system into an insurance policy

¹⁴⁵ Doc. C-5, Art. 2(2).

¹⁴⁶ C II, para. 331.

¹⁴⁷ C II, paras. 331-333.

¹⁴⁸ C II, para. 332.

¹⁴⁹ C II, para. 332.

¹⁵⁰ C II, para. 332-333.

against their own business decisions in that sector despite its risks¹⁵¹. Respondent argues that the 2011 and 2013 Constitutional Court Decisions reflect fundamental principles of Czech democracy, enshrined in the Czech Constitution, that resolved a vertical separation of powers dispute between municipalities and the Ministry of Finance¹⁵². According to Respondent, the Decrees issued by the municipalities following the Constitutional Court Decisions represent a legitimate and democratic exercise of police powers in the public interest and account for the evolving nature of gambling regulation – which must address emergent issues of public order and health, similarly to when regulating tobacco and other drugs¹⁵³.

198. To solve this dispute, the Tribunal will proceed as follows:

- It will first adjudicate Claimants’ claim that the regulatory changes in the Czech gambling sector, by themselves, constitute a breach of the FET standard enshrined in the BIT (**VII.1.1**);
- Thereafter, the Tribunal will analyze whether the Czech Republic first gave rise to and then breached Claimants’ legitimate expectations, in breach of the FET standard (**VII.1.2**); and
- Finally, the Tribunal will decide whether, by not granting an adequate transitional period for the cancellation of the Location Permits, the Czech Republic breached Claimants’ acquired rights in violation of the FET standard (**VII.1.3**).

VII.1.1. DID THE REGULATORY CHANGES PERFORMED BY THE CZECH REPUBLIC CONSTITUTE, BY THEMSELVES, A BREACH OF THE FET STANDARD?

199. As a first argument, Claimants say that the regulatory changes in the Czech gambling sector, which occurred between 2011 and 2017, constitute by themselves a breach of the FET standard¹⁵⁴. This claim is contested by the Czech Republic, which avers that the alterations of the law were reasonable reactions to the changing nature of the gambling sector, and that the changes were executed in the exercise of the State’s police powers¹⁵⁵.

200. The Tribunal will first analyze the Parties’ positions (**1.** and **2.**), and will then enter into a discussion (**3.**).

1. CLAIMANTS’ POSITION

201. Claimants argue that the changes in the regulatory regime resulted in the violation of their Treaty rights for two reasons: because the Czech Republic failed to act in a consistent manner and maintain a stable and transparent regulatory regime (**1.1**) and

¹⁵¹ R-PHB, paras. 3-4.

¹⁵² R-PHB, para. 4.

¹⁵³ R-PHB, paras. 3-4.

¹⁵⁴ C-PHB, paras. 43-47 and 15-20.

¹⁵⁵ R-PHB, para. 4.

because it failed to adhere to its obligation not to act arbitrarily or unreasonably (1.2).

1.1 THE CZECH REPUBLIC DID NOT ACT IN A CONSISTENT MANNER, AND FAILED TO MAINTAIN A STABLE AND TRANSPARENT REGULATORY REGIME

202. Claimants first argue that the Czech Republic failed in its obligation that all its organs act consistently and in its obligation to maintain a stable and transparent regulatory regime¹⁵⁶.

Czech Republic's breach of its obligation to act consistently

203. Claimants consider that the host State's regulatory framework must be interpreted and applied consistently between the State's administrative and judicial organs¹⁵⁷.

204. In the present case, Claimants aver that the Czech Republic, through the Ministry of Finance, issued long-term permits to Synot TIP to operate Gaming Devices; in addition, Claimants received advice and assurances that the Ministry of Finance was the sole regulator of Gaming Devices¹⁵⁸.

205. However, shortly thereafter, the Czech Republic took several measures – through the Constitutional Court, municipalities, Ministry of Finance and Parliament – which were inconsistent with the prior actions of the Ministry of Finance¹⁵⁹. In essence, Claimants argue that those measures were:

- The 2011 Decisions;
- The 2011 Amendment to the Lotteries Act, by which municipalities were granted the right to issue Decrees restricting the operation of Gaming Devices;
- The 2013 Constitutional Court Decision;
- The multitude of Decrees restricting the operation of WSMs and Gaming Devices; and
- The premature termination of Permits under Section 43(1) of the Lotteries Act.

206. As a result of these measures, Claimants argue that the Czech Republic acted inconsistently and breached Art. 2(2) of the BIT¹⁶⁰.

¹⁵⁶ C I, paras. 327-332; C II, paras. 338-374.

¹⁵⁷ C II, para. 339.

¹⁵⁸ C II, para. 368.

¹⁵⁹ C II, para. 365.

¹⁶⁰ C II, para. 374.

Czech Republic's failure to maintain a stable and transparent regulatory regime

207. Claimants also assert that the Czech Republic failed to maintain a stable and transparent regulatory regime, which is an essential element of fair and equitable treatment¹⁶¹.
208. Claimants maintain that, as of 2011, the key characteristics of the Czech regulatory regime were drastically changed¹⁶²:
- Prior to the 2011 Decisions, the Ministry of Finance was the sole and exclusive regulator of the Gaming Devices, but thereafter the Location Permits could be terminated as a result of Decrees issued by the municipalities, which were issued without reference to any published criteria¹⁶³;
 - The regulatory transformation was abrupt, since the Location Permits were immediately subject to the municipalities' Decrees; the three-year transitional period originally granted by the Czech Parliament in the 2011 Amendment to the Lotteries Act was annulled by the Constitutional Court in its 2013 Decision¹⁶⁴.
209. Additionally, Claimants are of the opinion that the Czech Republic failed to act in a transparent manner, as it should have made known to all (potential) investors the legal requirements for initiating, completing and operating investments made under the BIT¹⁶⁵. According to Claimants, this was not the case as, starting from 2011, the Czech Republic dismantled its regulatory regime and replaced it with an opaque and unpredictable one¹⁶⁶. This new regime failed to meet the predictability and transparency requirements for the following reasons¹⁶⁷:
- The municipalities were under no obligation to respect due process or provide reasons for their decisions¹⁶⁸;
 - The Decrees could not be challenged by operators¹⁶⁹; and
 - The Czech Republic did not provide coherent guidelines for the municipalities' exercise of regulatory power, thus depriving operators of the ability to know in advance how and on what basis the power would be exercised¹⁷⁰.

¹⁶¹ C II, paras. 467 and 481.

¹⁶² C II, paras. 474-479.

¹⁶³ C II, paras. 476-478.

¹⁶⁴ C II, para. 479.

¹⁶⁵ C II, para. 487.

¹⁶⁶ C II, paras. 491-492.

¹⁶⁷ C II, paras. 493-500.

¹⁶⁸ C II, para. 493.

¹⁶⁹ C II, para. 495.

¹⁷⁰ C II, para. 498.

210. For these reasons, Claimants consider that the Czech Republic breached its obligation to provide a stable and transparent regulatory framework arising from Art. 2(2) of the BIT¹⁷¹.

1.2 THE CZECH REPUBLIC BREACHED ITS OBLIGATION NOT TO ACT ARBITRARILY AND UNREASONABLY

211. Claimants argue that it is widely accepted that any measures that involve arbitrariness (*i.e.*, those not based on legal standards but on discretion, prejudice or personal preference) are in themselves contrary to the FET standard¹⁷². Claimants argue that unjustified retroactivity would also fall into this category¹⁷³.

212. According to Claimants, to avoid being arbitrary or unreasonable, the measure must bear a reasonable relationship to some rational policy, and there must be proportionality between the charge or weight imposed on the foreign investor and the aim sought to be realized¹⁷⁴.

213. In essence, Claimants consider that the Czech Republic acted arbitrarily and unreasonably for two reasons:

214. First, Claimants assert that municipalities have regulated Gaming Devices in an arbitrary manner, as Decrees were issued with no reference to objective and pre-announced criteria¹⁷⁵. In addition, Claimants consider that municipalities have failed to follow the few rules or guidelines issued by the Czech authorities¹⁷⁶.

215. Second, Claimants say that the 2011 and 2013 Decisions contravened the rule of law through arbitrarily replacing a clear and coherent regulatory framework with a series of measures that left the Gaming Devices sector in regulatory chaos¹⁷⁷. In this respect, Claimants maintain that the Constitutional Court¹⁷⁸:

- Decided to extend the competence of the municipalities to issue Decrees in relation to the Gaming Devices by adopting an irrational and extensive interpretation of the Lotteries Act contrary to the established understanding of the Ministry of Finance, the Ministry of Internal Affairs and Parliament¹⁷⁹;
- Disregarded the rule of law because it failed to acknowledge, and respect acquired rights of permit holders¹⁸⁰; and
- Decided that Permits could be withdrawn under Section 43(1) by irrationally interpreting the term “circumstances” included in that provision, and abused

¹⁷¹ C II, paras. 480 and 503.

¹⁷² C II, para. 504.

¹⁷³ C II, para. 505.

¹⁷⁴ C I, paras. 338-339.

¹⁷⁵ C II, paras. 223(b) and 238 *et seq.*

¹⁷⁶ C II, para. 255.

¹⁷⁷ C II, para. 511.

¹⁷⁸ C II, paras. 511-517.

¹⁷⁹ C II, para. 512(a).

¹⁸⁰ C II, para 513.

of its power when it directed the Ministry of Finance to terminate the Permits under that section¹⁸¹.

216. Furthermore, Claimants aver that the Constitutional Court failed to provide in its 2011 and 2013 Decisions any rational policy reason explaining why the regulatory powers should be vested in the municipalities rather than the Ministry of Finance¹⁸². Claimants finally state that the 2011 and 2013 Decisions and the 2011 Amendment to the Lotteries Act lacked proportionality¹⁸³.
217. For these reasons, Claimants conclude that the Czech Republic has acted arbitrarily and unreasonably, in breach of Art. 2(2) of the BIT¹⁸⁴.

2. RESPONDENT'S POSITION

218. Respondent argues that it has persistently acted in a consistent manner and has maintained a stable and transparent regulatory regime **(2.1)** and that neither itself nor its organs ever acted arbitrarily or unreasonably **(2.2)**.

2.1 THE CZECH REPUBLIC ACTED IN A CONSISTENT MANNER AND THERE WAS NO EXPECTATION OF A STABLE AND TRANSPARENT REGULATORY ENVIRONMENT

A. The Czech Republic acted in a consistent manner

219. The Czech Republic submits that it has always acted consistently in relation to Claimants' investments¹⁸⁵, from a legal and factual perspective.
220. From a legal perspective, Respondent asserts that Claimants misinterpret the obligation to act consistently in three main ways.
221. First, the Czech Republic avers that Claimants' position that State organs must interpret the regulatory framework consistently, even if such interpretation is not compliant with the laws of the host State, is unfounded¹⁸⁶.
222. According to Respondent, the Constitutional Court cannot be barred from departing from the interpretation of another organ of the State, especially when such interpretation is incorrect¹⁸⁷. It is the role of the Czech Constitutional Court to "guide the other organs of the State by interpreting the law"¹⁸⁸.
223. Moreover, the Czech Republic argues that there is no breach of international law by State organs complying with the decisions of domestic courts¹⁸⁹.

¹⁸¹ C II, para 514.

¹⁸² C I, para. 340.

¹⁸³ C I, para. 340.

¹⁸⁴ C II, para. 517.

¹⁸⁵ R II, para. 430.

¹⁸⁶ R II, para. 418.

¹⁸⁷ R II, para. 419.

¹⁸⁸ R II, para. 420.

¹⁸⁹ R II, paras. 421-422.

224. Second, Respondent submits that Claimants failed to mention two critical elements of the obligation to act consistently¹⁹⁰:

- The host State is not obliged to act consistently over time absent specific commitment to that effect; and
- It is the State's fundamental right to modify a law or its interpretation.

225. Third, the Czech Republic dismisses the case law on which Claimants rely in support of their argument on breach of the obligation of consistency, arguing that the case law does not suggest that the evolution over time in the interpretation of a statutory provision by a domestic court can amount to a breach of FET¹⁹¹.

The existence of a dual framework

226. From a factual perspective, the Czech Republic asserts that there was a "dual framework" at the time of Claimants' investment as the regulatory authority was already divided between the Ministry of Finance and the municipalities¹⁹².

227. First, Respondent highlights that the Ministry of Finance and the municipalities disagreed as to whether the municipalities could regulate Gaming Devices in the same way they regulated WSMs¹⁹³. Furthermore, the legal opinions submitted by Claimants support the Czech Republic's view that there was a long-standing disagreement between the Ministry of Finance and the municipalities with respect to the regulatory regime¹⁹⁴.

228. Therefore, the Czech Republic concludes that considering the existing disagreement, the Constitutional Court had the sole power to resolve such a conflict¹⁹⁵.

229. Second, the Czech Republic asserts that there were no inconsistent decisions on the part of the Constitutional Court, as its 2011 and 2013 Decisions were the logical extension of its 2005-2007 case law¹⁹⁶. In particular, the 2011 and 2013 Decisions did not significantly change the regulatory system since during the 2011-2016 period¹⁹⁷:

- The Ministry of Finance was the sole responsible for issuing both Master and Location Permits¹⁹⁸;

¹⁹⁰ R II, paras. 424-427; and H-M-2, slide 87.

¹⁹¹ R II, paras. 428-429.

¹⁹² R II, para. 431.

¹⁹³ R II, para. 431.

¹⁹⁴ R II, para. 432.

¹⁹⁵ R II, para. 433.

¹⁹⁶ R II, para. 433.

¹⁹⁷ R II, para. 434.

¹⁹⁸ R II, para. 434.

- Master Permits were never revoked¹⁹⁹; and
 - The Ministry of Finance continued to consider the municipalities' views on questions of local public order before issuing permits²⁰⁰.
230. According to the Czech Republic, the only difference between the pre-2011 and the 2011-2016 regimes was that municipalities were given the power to regulate Gaming Devices by way of Decrees²⁰¹. Likewise, Respondent further asserts that the regime introduced by the Gaming Act in 2017 is still consistent with the prior framework²⁰².
231. Third, Respondent highlights that the Ministry of Finance never revoked Master Permits²⁰³ and that the possibility of Decrees interfering with Location Permits was a contingency that was foreseen in the Master Permit from the outset²⁰⁴.

B. The Czech Republic did not fail to maintain a stable and a transparent regulatory environment

232. The Czech Republic rejects Claimants' assertion that it failed to maintain a stable and transparent regulatory environment.
233. First, Respondent contends that under international law, absent a specific commitment on the part of the State²⁰⁵, there does not exist a generalized expectation of stability²⁰⁶. To the contrary, Respondent submits that in cases where no specific commitments were made, tribunals concluded that investors must expect that the legal framework will change²⁰⁷.
234. Furthermore, there is a high threshold for constituting a treaty breach, which requires a drastic and unforeseeable changes of the legal environment²⁰⁸. With reference to case law, Respondent submits that investment tribunals have found a treaty breach where there was²⁰⁹:
- An "entire transformation" of the legal and business environment²¹⁰;
 - "A total and unreasonable change" to the regulatory regime²¹¹;

¹⁹⁹ R II, para. 434.

²⁰⁰ R II, para. 434.

²⁰¹ R II, para. 434.

²⁰² R II, paras. 435-436.

²⁰³ R II, para. 434.

²⁰⁴ R II, para. 437.

²⁰⁵ R II, paras. 486-487.

²⁰⁶ H-M-2, slide 94.

²⁰⁷ R II, para. 489.

²⁰⁸ R II, para. 490; and H-M-2, slide 95.

²⁰⁹ R II, para. 491.

²¹⁰ R II, para. 491.

²¹¹ R II, para. 491.

- A radical alteration of the “essential characteristics of the legislation”²¹²; or
- An “unpredictable radical transformation” in the conditions of the investment²¹³.

235. In the present case, the Czech Republic maintains that the threshold for a potential breach of the BIT has not been reached²¹⁴, since there is no substantial difference between the regulatory regimes in the post-2011 period under the Lotteries Act and since 2017 under the Gaming Act²¹⁵. According to Respondent, the legal and business environment “evolved gradually”, as opposed to a radical transformation²¹⁶.

236. Second, Respondent argues that transparency is not an absolute obligation and that the prohibition on non-transparent behavior gives way before the ordinary exercise of regulatory authority²¹⁷. Additionally, the Czech Republic asserts that there is a high threshold for lack of transparency to constitute a breach of FET²¹⁸. And that a simple lack of transparency in the regulatory framework is insufficient to constitute a treaty breach: an additional element, such as arbitrariness or procedural unfairness, is required²¹⁹. Moreover, Respondent maintains that an allegation of breach of transparency must be measured having regard to the factual circumstances of each case²²⁰.

237. In the present case, Respondent submits that Claimants’ allegations that there was no predictable and transparent regulatory framework are groundless, for the following reasons:

- On the one hand, Respondent submits that municipalities are bound by a legal framework established by the Lotteries Act, the Code of Administrative Procedure, and the Municipalities Act, and municipal acts adopted by such municipalities are consistent with due process and transparency²²¹. In addition, the Czech Republic avers that municipalities’ conduct is also governed by constitutional principles, including openness and transparency²²².
- Furthermore, the Czech Republic submits that the Ministry of Internal Affairs, in consultation with Department 34, issued “Legal Interpretations” to

²¹² R II, para. 491.

²¹³ R II, para. 491.

²¹⁴ R II, para. 492.

²¹⁵ R II, para. 492.

²¹⁶ R II, para. 492.

²¹⁷ R I, para. 526; and R II, para. 496.

²¹⁸ R II, para. 497.

²¹⁹ R II, paras. 498-499.

²²⁰ R II, paras. 500-501.

²²¹ R I, para. 532.

²²² R II, para. 509.

be published in advance containing guidance for the municipalities' exercise of regulatory power on Gaming Devices²²³.

- On the other hand, Respondent rejects Claimants' argument that municipalities' decisions cannot be challenged by affected permit holders, arguing that Synot TIP initiated almost 130 local court proceedings starting from 2013 to date²²⁴; an operator can challenge the Ministry of Finance's decision in the courts, and those proceedings involve a full review of any Decrees implicated²²⁵.

2.2 THE CZECH REPUBLIC DID NOT ACT ARBITRARILY AND UNREASONABLY

238. The Czech Republic argues that neither itself nor its organs ever acted arbitrarily or unreasonably.
239. Respondent argues that a State's conduct is arbitrary and unreasonable only if it shocks or surprises judicial propriety with its prejudice, preference, or bias²²⁶. In the Czech Republic's opinion, the establishment of a breach on arbitrariness requires a disregard for the rule of law²²⁷ and is subject to a high threshold²²⁸.
240. Additionally, Respondent considers that the notion of "deference" that international law accords to domestic authorities to regulate matters within their borders is relevant to the assessment of whether a State's conduct is arbitrary or unreasonable²²⁹. Therefore, the Czech Republic avers that if a measure serves a legitimate purpose, has a rational explanation and is devoid of prejudice or bias, it may not be considered arbitrary²³⁰.
241. In essence, the Czech Republic contends that it did not act in an arbitrary and in an unreasonable manner, for two reasons:
242. First, Respondent avers that municipalities issued Decrees in a non-arbitrary manner. Respondent asserts that there has been no systemic failure of municipalities to follow rules and guidelines. Additionally, according to the Czech Republic, the small minority of regulations that have given rise to controversy have been subject to considerable scrutiny from several organs of the Czech Republic²³¹.
243. Second, Respondent submits that the Constitutional Court's 2011 and 2013 Decisions were not arbitrary but suitable, necessary, and not excessive²³²:

²²³ R I, para. 534; and R II, para. 512.

²²⁴ R I, para. 533; and R II, para. 511.

²²⁵ R II, para. 510.

²²⁶ R I, paras. 543 and 545; and R II, para. 521.

²²⁷ H-M-2, slide 101.

²²⁸ R I, para. 544.

²²⁹ R II, para. 522.

²³⁰ R II, paras. 519-520 and 522.

²³¹ R II, para. 296.

²³² R II, para. 528.

- *First*, the resolution of the controversy between the municipalities and the Ministry of Finance was the only available suitable measure²³³;
- *Second*, in light of the evolving interpretation of the municipalities' powers in the gambling area, it was necessary to clarify this legal issue in order to promote public health and public order²³⁴; and
- *Third*, the judgments of the Czech Constitutional Court were not more burdensome for the investor than required by such public purpose, and therefore not excessive²³⁵.

244. Moreover, Respondent disagrees with Claimants' argument that the Constitutional Court's conduct was unreasonable and arbitrary when it allegedly imposed what Claimants refer to as a "retroactive limitation of the rights of individuals" and introduced "measures based on discretion, prejudice or personal preference"²³⁶. The Czech Republic avers that the argument is flawed, as the Constitutional Court only clarified a preexisting legal situation²³⁷.

3. DISCUSSION

245. In the current section, the Tribunal will begin by summarizing the relevant facts (3.1); it will then establish the applicable legal provisions (3.2) and later make a decision on whether the regulatory changes introduced by the Czech Republic constituted a breach of the FET standard (3.3).

3.1 SUMMARY OF RELEVANT FACTS

246. The Terminals were introduced in the Czech market for the first time in 2003. It was then when the Ministry of Finance began issuing Permits for these novel devices under Part Six, Section 50(3) of the Lotteries Act²³⁸. The LLSs were later introduced in 2008 and they were licensed under the same provisions of the Lotteries Act as the Terminals²³⁹.

247. Since the introduction of the Terminals, the regulation of these devices has been subject to three main different regimes. From 2003 to 2011, they were subject to the **Original Regulatory Regime (A.)**; from 2011 to 2016 to an **Interim Regulatory Regime (B.)**; and as of 1 January 2017 to the **Current Regulatory Regime (C.)**.

A. Original Regulatory Regime (1990-2011)

248. When the Terminals were introduced in the Czech market in 2003, there existed a regulatory regime in force since 1990, when the Lotteries Act was originally

²³³ R II, para. 529.

²³⁴ R II, para. 530.

²³⁵ R II, para. 531.

²³⁶ H-M-2, slide 100; and HT, Day 1, p. 232, ll. 2-20 (Professor Silva Romero).

²³⁷ R II, para. 516.

²³⁸ C I, para. 103; R I, para. 489; R II, para. 61; and HT, Day 5, p. 98, l. 14 – p. 99, l. 22 (██████).

²³⁹ ██████ WS I, para. 34.

adopted by the Czechoslovak Parliament²⁴⁰. Respondent only came into being in its current state on 31 December 1992, when Czechoslovakia underwent a split into the Czech and Slovak Republics. The Lotteries Act continued in force as a law of the Czech Republic²⁴¹.

249. For context, it is important to note that the Lotteries Act was adopted at a time when self-government was not yet a principle under Respondent's constitutional law (Respondent did not even exist, *per se*), and the internet was not present in the gambling sector²⁴².
250. In 1998, the Czech Parliament adopted an amendment to the Lotteries Act [the "**1998 Amendment**"]. Until that point the Ministry of Finance had been the sole gambling regulator, but from then municipalities were authorized to regulate low value lotteries and raffles, and WSMs operated with local currency outside casinos²⁴³.
251. In 2003 the first Terminals appeared in the Czech market²⁴⁴. Since these devices did not fit the narrowly defined technical category of WSMs provided for in the Lotteries Act, the Ministry of Finance decided that it was the competent entity to regulate these new devices²⁴⁵. It would regulate them under the catch-all provision included in Section 50(3), which made the Ministry the regulator for devices that were not otherwise foreseen in the law²⁴⁶.
252. In this regulatory scenario, Terminals required an authorization that would have both a central and a local component:
- On the central level, the Ministry of Finance oversaw the issuing of a Master Permit²⁴⁷; and
 - On the local level, also the Ministry of Finance would modify the Master Permit to include Location Permits allowing the operation of Terminals at specific addresses²⁴⁸.
253. LLS devices, in turn, operated under a slightly different regime: they only required Location Permits and did not need a Master Permit²⁴⁹.
254. In 2008 the Ministry of Finance issued a decision in which it stated that Decrees limiting or banning WSMs would be considered when the Ministry processed

²⁴⁰ R I, para. 49.

²⁴¹ R I, para. 49.

²⁴² [REDACTED] ER I, paras. 40-41.

²⁴³ R II, para. 25; and [REDACTED] ER I, paras. 50 and 69.

²⁴⁴ C I, para. 103; R I, para. 489.

²⁴⁵ Doc. C-8, Section 50(3); Doc C-17; See also C I, para. 111; R I, paras. 65-68.

²⁴⁶ Doc. C-8, Section 50(3). See also R II, para. 58; and HT, Day 1, p. 164, l. 12 – p. 165, l. 11 (Dr. Stein).

²⁴⁷ HT, Day 1, p. 165, l. 6 – p. 166, l. 8 (Dr. Stein).

²⁴⁸ Doc. C-17. See also HT, Day 1, p. 30, ll. 8-17 [REDACTED] and HT, Day 1, p. 165, l. 6 – p. 166, l. 8 (Dr. Stein).

²⁴⁹ See, e.g., Doc. C-113. See also HT, Day 1, p. 166, ll. 3-8 (Dr. Stein).

permit applications under Section 50(3)²⁵⁰. If the municipality gave evidence of the “possibility of a breach of public order”, the Permit would be rejected²⁵¹. In 2009 the Ministry of Finance went a step further and requested that the operators include a positive declaration from the municipality²⁵². Without the municipality’s consent, the Ministry of Finance would not modify the Master Permit to include the Location Permit²⁵³.

B. Interim Regulatory Regime (between 2011 and 2016)

255. The Interim Regulatory Regime was in force between 2011 and 2016, a period encompassing the 2011 Decisions, the 2011 Amendment and the 2013 Decision²⁵⁴. Throughout this time, the Ministry of Finance continued to be the authority responsible for issuing permits for Gaming Devices under Section 50(3). The Ministry of Finance continued to issue permits only after taking into account the municipalities’ views on local public order²⁵⁵.
256. Inspired by the 2011 Decisions, the Czech Parliament passed the 2011 Amendment, which modified the Lotteries Act as follows²⁵⁶:
- It introduced definitions of the Gaming Devices;
 - It allowed municipalities to restrict or prohibit the operation of Gaming Devices licensed under Section 50(3) via Decrees; and
 - It inserted a transitional provision in Section 51(4), under which the authorization of municipalities to issue Decrees would not take effect for three years (*i.e.*, the transitional provision would not apply to Location Permits issued prior to 1 January 2012 until 31 December 2014).
257. Finally, this transitional period was annulled by the 2013 Decision²⁵⁷.

C. Current Regulatory Regime (2017-present)

258. The Lotteries Act was replaced by a new law, the Gaming Act, which came into effect on 1 January 2017²⁵⁸.
259. Under the Current Regulatory Regime, Gaming Devices are categorized as technical games. In practice, this means that the Gaming Devices are regulated in the following manner²⁵⁹:

²⁵⁰ Doc. R-221.

²⁵¹ Doc. R-221. See also R II, para. 85.

²⁵² R II, para. 86.

²⁵³ Doc. R-223. See also R II, para. 85; and HT, Day 1, p. 167, ll. 4-16 (Dr. Stein).

²⁵⁴ R II, paras. 204-210.

²⁵⁵ Docs. R-221 and R-223. See also R II, para. 210.

²⁵⁶ Doc. C-28. See also C II, para. 206.

²⁵⁷ Doc. C-30. See also C II, para. 215.

²⁵⁸ Doc. C-410.

²⁵⁹ ██████████ WS, para. 20.

- The Ministry of Finance issues a Master Permit, in which it allows the operation of a specific game of chance and approves the game plan and the device²⁶⁰; and
- Municipalities grant Location Permits to operate the Gaming Devices in specific addresses within their territories, applying their own Decrees, which can restrict or prohibit gambling within their borders²⁶¹.

3.2 APPLICABLE LEGAL PRINCIPLES

A. Consistency, stability and transparency of the regulatory framework

260. Art. 2 of the BIT creates an obligation on the Czech Republic to accord fair and equitable treatment [previously defined as “FET”] to the investments of Cypriot investors within its territory. The provision reads as follows²⁶²:

“Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party”.

[Emphasis added].

261. The Tribunal is confronted with a classic discussion in the law of investment protection: the dichotomy between legitimate regulatory acts (adopted by a State and not giving rise to compensation) and compensable breaches of the State’s obligation to provide fair and equitable treatment to a protected investment.
262. The sovereignty enjoyed by States implies the right to regulate (through laws or decrees and regulations approved by the public administration) for general welfare and in the pursue of legitimate policy goals. The corollary is that States cannot be held liable for economic losses to investors caused by the enactment of *bona fide* laws or regulations of general application in the exercise of legitimate regulatory powers.
263. That said, the State’s sovereign right to issue laws and regulations can also be misused. International law cannot – and does not – grant a blanket exemption to all laws and regulations enacted by a State. *Bona fide*, non-discriminatory laws and regulations of general application, promulgated for a public purpose and in the furtherance of the general welfare, do not give rise to responsibility, even if the investment of a protected investor is affected. However, under other circumstances,

²⁶⁰ Doc. C-410, Sections 86, 87, and 118.

²⁶¹ Doc. C-410, Section 97.

²⁶² Doc. C-5, Art. 2.

legislative measures that result in dispossession or impairment of a protected investor, may constitute compensable breaches of investor protection standards.

264. The right to legislate is especially legitimate in certain regulated sectors, such as health, defense or gambling. In these sectors, where business activity directly impacts on the sovereignty of the State or the welfare of citizens, supervision and regulation by the State are required to avert or at least mitigate risks. On the other side, there are certain treaties which contain a specific reference to stability of regulation (e.g., the Energy Charter Treaty); in those cases, the obligation to promote stable conditions is more robust, albeit not absolute²⁶³.
265. In the current case, Art. 2 of the BIT stipulates that investments must be accorded FET. There is no mention in Art. 2 of any obligation to act consistently or to maintain a stable, predictable, and transparent regulatory framework. The preamble of the BIT likewise does not refer to any such obligation. The relevant question is, therefore, how much regulatory stability is required under FET in cases where:
- the BIT does not include any specific obligations as to the stability of the regulatory regime, and
 - the State never gave any specific assurances.
266. In this regard, Claimants admit that the threshold for a regulatory change to constitute a breach of the FET standard is high²⁶⁴; both parties agree that treaty protection comes into play only if there are “drastic and unforeseeable changes of the legal environment”²⁶⁵.
267. In making the judgement whether States have trespassed this threshold, tribunals must take into consideration all relevant factors and circumstances, including the magnitude of the change, the economic impact upon the investor’s enterprise, the abruptness of the change, the public interest involved, the history of legislative change in the relevant sector and whether external circumstances justify the change.

Case law

268. The Parties discuss various arbitral decisions concerning a Host State’s duty to maintain a stable and transparent regulatory framework as part of its obligation to accord fair and equitable treatment to protected investments.
269. First, there is case law which establishes that the FET standard requires regulatory stability, even in investment treaties not specifically referring to stability in the preamble or in the text. In *Unglaube*, the arbitral tribunal accepted that²⁶⁶:

“stability of the legal and business framework [...] is an essential element in the standard of what is fair and equitable treatment”.

²⁶³ Doc. CL-272, *Antin*, para. 531.

²⁶⁴ C II, para. 472

²⁶⁵ C II, para. 472; and R II, para. 490.

²⁶⁶ Doc. RL-196, *Unglaube*, para. 248.

270. Along the same lines, in *Merrill & Ring Forestry LP v. Canada*, the tribunal considered that stability formed part of the FET standard. In particular, the tribunal stated that²⁶⁷:

“[T]he stability of the legal environment is also an issue to be considered in respect of fair and equitable treatment. State practice and jurisprudence have consistently supported such a requirement in order to avoid sudden and arbitrary alterations of the legal framework governing the investment”.

271. There is case law which weighs the obligation of regulatory stability against the State’s right to regulate. For example, in *Cairn v. India*²⁶⁸, the tribunal concluded that:

“[T]he principle of legal certainty and predictability cannot be understood in absolute terms and should instead be balanced against the State’s power to act in pursuance of the public purpose”.

272. Similarly, in *Silver Ridge v. Italy*, the tribunal echoed the *Antaris v. Czech Republic* tribunal’s words, which expressed²⁶⁹:

“(8) The requirements of legitimate expectations and legal stability as manifestations of the FET standard do not affect the State’s rights to exercise its sovereign authority to legislate and to adapt its legal system to changing circumstances.

(9) The host State is not required to elevate the interests of the investor above all other considerations, and the application of the FET standard allows for a balancing or weighing exercise by the State and the determination of a breach of the FET standard must be made in the light of the high measure of deference which international law generally extends to the right of national authorities to regulate matters within their own borders”.

273. Second, there is also case law on the requirement for a State to provide a transparent legal framework. For instance, the *Metalclad* tribunal described the requirements of the transparency obligation in detail²⁷⁰:

“The Tribunal understands [the obligation of transparency] to include that all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made, under the Agreement should be capable of being readily known to all affected investors of another Party. There should be no room for doubt or uncertainty on such matters. Once the authorities of the central government of any Party [...] become aware of any scope for misunderstanding or confusion in this connection, it is their duty to ensure that the correct position is promptly determined and clearly stated so that investors can proceed with all appropriate expedition in the confident belief that they are acting in accordance with all relevant laws”.

²⁶⁷ Doc. CL-292, *Merrill & Ring Forestry*, para. 232.

²⁶⁸ R II, para. 496, citing to Doc. CL-274, *Cairn Energy*, para. 1788.

²⁶⁹ Doc. RL-310, *Silver Ridge Power*, para. 418.

²⁷⁰ Doc. CL-43, *Metalclad*, para. 76.

274. Finally, as to consistency, the *Tecmed* tribunal also confirmed that a foreign investor expects the host state to act in a consistent manner²⁷¹. The tribunal also considered that consistency was related to the state’s obligation to act in a transparent manner and without arbitrariness²⁷²:

“The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations. [...]

The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities”.

B. Arbitrariness

275. Again, Art. 2 of the BIT does not mention any obligation on the part of the State to abstain from adopting arbitrary measures; notwithstanding this absence, it is commonly accepted that any measure that involves arbitrariness is, by definition, contrary to the FET standard; and measures are arbitrary or unreasonable if they are based on prejudice, preference or bias that shocks, or at least surprises, a sense of judicial propriety²⁷³.

Case law

276. There is case law which confirms the Tribunal’s finding. For instance, in *EDF v. Romania* the tribunal found that arbitrariness includes²⁷⁴:

“a measure that is not based on legal standards but on discretion, prejudice or personal preference”.

277. Additionally, the *Electrabel* tribunal confirmed that a State measure will not be considered arbitrary if it is reasonably related to a rational policy²⁷⁵:

“a measure will not be arbitrary if it is reasonably related to a rational policy [...]. That is, there needs to be an appropriate correlation between the state’s public objective and the measure adopted to achieve it. This has to do with the nature of the measure and the way it is implemented”.

* * *

278. Ultimately, the case law confirms the Tribunal’s findings that:

²⁷¹ Doc. CL-66, *Tecmed*, para. 154.

²⁷² Doc. CL-66, *Tecmed*, para. 154.

²⁷³ Doc. CL-24, *Elettronica Sicula*, para. 128.

²⁷⁴ Doc. CL-22, *EDF*, para. 303.

²⁷⁵ Doc. RL-316, *Electrabel*, para. 179.

- There is, in general, an obligation under the FET standard for States to maintain a stable regulatory framework for protected investments; however,
- The States' obligation to maintain a stable regulatory framework is not absolute, and
- In cases brought under international treaties with no specific reference to an obligation of the State to maintain a stable regulatory framework, such as the current one, there is a less stringent obligation of the State to limit changes to its regulatory system;
- Besides, there is an obligation under the FET standard for States to act consistently, in a non-arbitrary manner.

3.3 DECISION OF THE TRIBUNAL

279. The Tribunal will jointly analyze the consistency, stability and transparency requirements under the FET (A.), and will then discuss the obligation for the Czech Republic to abstain from arbitrary measures (B.).

A. Consistency, stability and transparency

280. The Tribunal considers that the obligations to provide a stable regulatory framework, to ensure that such framework is transparent and to act in a consistent manner, are intertwined and will address them jointly.

281. Claimants say that, as a result of inconsistent decisions of different organs of the Czech Republic²⁷⁶, the Czech regulation of gambling was drastically changed in 2011²⁷⁷. They also claim that the change in the regulatory framework has led to an unpredictable and opaque²⁷⁸ regime that resulted in anarchy and illicit gaming²⁷⁹. The resulting failure to provide a stable regulatory regime would thus amount to a breach of Art. 2 of the BIT.

282. Having analyzed the underlying evidence, the Tribunal is convinced that the averments by Claimants are not supported by the facts.

283. First, the regulatory changes in the Czech gambling sector, which were adopted between 2011 and 2017, were implemented by a democratic State, governed by the rule of law, for a legitimate public purpose and in the furtherance of general welfare.

284. The Lotteries Act was adopted in 1990, in the wake of the 1989 Velvet Revolution²⁸⁰. Five years after the 1992 split of Czechoslovakia, the Czech parliament adopted an amendment to the Lotteries Act, giving municipalities authority to regulate low value lotteries and raffles and classical WSMs operated

²⁷⁶ C II, paras. 365-374.

²⁷⁷ C II, para. 474.

²⁷⁸ C II, paras. 491-503.

²⁷⁹ C I, Section IV; and C II, para. 222.

²⁸⁰ R II, para. 25.

outside casinos²⁸¹. Since then, there have been two regulatory authorities in the Czech gambling system:

- The Ministry of Finance, which has supervised certain types of (higher value) gambling²⁸²; and
- Municipalities, which have been entrusted with other types of gambling, including WSMs; under the Lotteries Act municipalities also had the right to issue Decrees setting forth the conditions for operating WSMs within their territory²⁸³.

285. Second, when the Czech Republic enacted the Lotteries Act, the Gaming Devices did not exist. Once these new gaming systems were introduced at the beginning of the 21st century, there was a legitimate doubt whether they should be considered as WSMs (subject to municipal authorization), or as innominate games (subject to supervision by the Ministry of Finance). In 2003, the Ministry of Finance began issuing Master and Location Permits for Gaming Devices, and it was only a matter of time when the dispute between the municipalities and the Ministry of Finance would erupt: the municipalities argued that WSMs and Gaming Devices were equivalent devices and that Decrees which applied to WSMs should also apply to Gaming Devices.

286. In short, contrary to their claim, Claimants did not make their investment at a point in time when there was a settled single regulator regime, but when the Ministry of Finance and municipalities each already shared a role in regulating gambling.

287. Third, in 2011 the Constitutional Court handed down its 2011 Decisions on the annulment of Decrees²⁸⁴. The Court found for the municipalities and upheld the constitutionality of the three Decrees that the Ministry of Finance had challenged. The Constitutional Court decided that Gaming Devices must be equated with WSMs, as there were no visible or functional differences between these types of devices. Because of that, municipalities were empowered to issue Decrees to regulate the installation of Gaming Devices within their territory, with the purpose of defending public order. The Constitutional Court also decided that the Ministry of Finance must terminate Location Permits that conflicted with Decrees, pursuant to Section 43(1) of the Lotteries Act²⁸⁵, which reads as follows:

“(1) The body which licensed the lottery or similar game shall withdraw the permit if there occur or become known any circumstances for which it would not have been possible to license the lottery or similar game, or if it proves later that the data according to which the permit was issued are misleading”.

288. In late 2011, the Czech legislator reacted, amending the Lottery Act in accordance with the Constitutional Court’s 2011 Decisions²⁸⁶. The 2011 Amendment clarified

²⁸¹ R II, para. 25.

²⁸² Doc. C-8, Section 50(3); See also R I, para. 63.

²⁸³ R II, para. 57; and Doc. C-8, Section 50(4).

²⁸⁴ Docs. C-26, C-27, and C-147.

²⁸⁵ C-PHB, para. 15(b).

²⁸⁶ C-PHB, para. 16.

that municipalities had the power to issue Decrees regulating the Gaming Devices and inserted a transitional provision under which Decrees would not take effect in relation to existing permits for three years²⁸⁷. This legislative three-year transitional period was declared contrary to the Constitution and was annulled by the Constitutional Court, acting as negative legislator, in its 2013 Decision²⁸⁸.

289. In due course, when the Location Permit contradicted a Decree issued by the relevant municipality, the Ministry of Finance terminated Location Permits for specific Gaming Devices granted in favor of Synot TIP²⁸⁹.
290. Finally, in 2017, the new Gaming Act was enacted, clarifying the regulatory status of Gaming Devices. Under the new regime²⁹⁰:
- The Ministry of Finance issues a Master Permit; and
 - Municipalities are tasked with granting Location Permits in their territory and can also issue Decrees prohibiting and restricting the establishment of gambling activities in its territory.
291. Significantly, since 2004 Synot TIP has held a Master Permit, which authorizes the operation of Gaming Devices in the Czech Republic²⁹¹. Over time the number of Location Permits first increased and then decreased: from initially three Location Permits in 2004²⁹², Synot TIP operated over 4,000 CLSs at the end of 2011²⁹³. By October 2021 the number of CLSs Synot TIP was operating had been reduced to 849²⁹⁴.
292. Summing up, the main characteristics of the three different regulatory regimes between the time of the investment and the present time have remained unaltered and cannot be considered unpredictable and opaque, since:
- Master Permits and Location Permits have continuously been required to operate the Gaming Devices;
 - The Ministry of Finance has always been in charge of issuing Master Permits; and
 - Municipalities have always issued Decrees, even if during the Original Regulatory Regime they only regulated WSMs; starting from 2008, the Ministry of Finance rejected permit applications for Gaming Devices that were contrary to Decrees; after enactment of the 2011 Amendment municipalities were entitled as per the law to restrict or prohibit the operation of Gaming Devices via Decrees.

²⁸⁷ C-PHB, para. 16.

²⁸⁸ C-PHB, para. 17.

²⁸⁹ C-PHB, para. 19.

²⁹⁰ Doc. C-410, Sections 86 and 97. See also R II, para. 217.

²⁹¹ Doc. C-7, para. 1.

²⁹² Doc. C-7, para. 5.

²⁹³ [REDACTED] WS II, paras. 46 and 51.

²⁹⁴ [REDACTED] WS III, para. 38; and HT, Day 2, p. 154, ll. 2-19 [REDACTED].

Application of the legal standard

293. Although there is no specific reference in the BIT to any duty by the Czech Republic to maintain a stable regulatory framework, the Tribunal has found that such duty can be derived from the FET obligation in the Treaty. This lowered level of scrutiny must be weighed against the Czech Republic's sovereign right to regulate.
294. In light of the Tribunal's conclusion that there were no major changes to the regulatory framework governing gambling in the Czech Republic, the Tribunal finds that there was no breach of Art. 2 of the BIT through any alleged failure by the Republic to act consistently and maintain a stable and transparent regulatory framework.

B. Lack of arbitrariness

295. Claimants allege that municipalities issued Decrees to regulate the Gaming Devices in an arbitrary manner, which resulted in a breach of the FET standard. In essence, Claimants indicate that:

- There are no rules governing the substance of Municipal regulation of Gaming Devices through Decrees²⁹⁵; and
- Municipalities have failed to follow the few rules or guidelines issued by the Czech authorities²⁹⁶.

296. The Tribunal, however, finds that the allegations submitted by Claimants are not supported by the facts. Under Czech law, the self-governing powers of municipalities include the right to issue Decrees of general application in various matters, including the preservation of public order within the municipal territory. But this legal framework also includes several safeguards that limit the possibility of municipalities acting arbitrarily.

297. First, Czech law regulates the procedure for the issuance of Decrees by municipalities:

- When municipalities issue Decrees, they must do so in accordance with the procedures foreseen in the Municipalities Act, which sets forth rules and guidelines to ensure coherence, transparency and accountability and to allow concerned citizens and stakeholders to participate in municipal decision-making²⁹⁷;
- The Lotteries Act and the Gambling Act establish how a municipality may regulate gambling: banning gambling altogether, defining zones or precise

²⁹⁵ C I, para. 250; C II, para. 223 (b) and 238 *et seq.*

²⁹⁶ C II, para. 255 *et seq.*

²⁹⁷ R II, paras. 247-248.

addresses where gambling is allowed, or permitting gambling across the entire territory of the municipality²⁹⁸; and

- Municipalities are also bound by the Constitutional Court's case law, which requires that they give due weight to different constitutional principles, such as the principle of transparency and participation, among others²⁹⁹.

298. Furthermore, the Ministry of Internal Affairs and the Office for the Protection of Competition have provided guidance on how municipalities must act when issuing Decrees³⁰⁰:

- As regards the guidelines published by the Ministry of Internal Affairs, there are two sets of guidelines: one with respect to the issuance of Decrees in general, and another with respect to Decrees that applied specifically to gambling. In essence, these guidelines, which were published as of 2012³⁰¹:
 - o Describe the process for preparing, approving and issuing Decrees;
 - o Describe in detail the Ministry of Internal Affairs' supervision;
 - o Examine and comment on gambling-specific case-law of the Constitutional Court; and
 - o Provide recommendations as to the procedure for issuing, and content of, Decrees which regulate gambling.
- The guidelines published by the Office for the Protection of Competition, in turn, set out specific issues to be considered when municipalities adopt Decrees with different types of restrictions³⁰².

299. Second, the Ministry of Internal Affairs is responsible for verifying that Decrees conform to the applicable legal framework and the constitutional principles³⁰³. As set forth in the Municipalities Act, the municipalities must submit their Decrees for review³⁰⁴ and, in the event that the Ministry concludes that a Decree is at variance with the law, it acts to remedy non-compliance³⁰⁵.

300. Finally, there is another additional jurisdictional safeguard: Czech law allows operators to challenge the decisions of the Ministry of Finance before the Supreme Administrative Courts³⁰⁶. These proceedings involve a full review of any of the

²⁹⁸ R II, para. 251.

²⁹⁹ R II, para. 251.

³⁰⁰ R II, para. 256, referring to Docs. C-149, C-155, C-168, C-176, C-412, and C-418.

³⁰¹ ████████ WS, paras. 21-24.

³⁰² R II, para. 258; Doc. C-418, Section 8.4(1); and Doc. C-155.

³⁰³ R II, para. 264. See also ████████ r WS, para. 13.

³⁰⁴ R II, para. 264. See also ████████ WS, paras. 13-15; and Doc. R-209, Section 12(6) and 123.

³⁰⁵ ████████ WS, para. 25.

³⁰⁶ ████████ WS II, para. 42.

Decrees implicated and may lead to their disapplication³⁰⁷. In fact, Claimants filed over 100 proceedings before Czech courts³⁰⁸. Additionally, Decrees, which constitute regulations of general application, can be directly challenged before the Constitutional Court by the Ministry of Finance.

The 2011 and 2013 Decisions were not arbitrary or unreasonable

301. Claimants bring an additional argument to support their submission that the regulatory changes breached Respondent's duty to accord FET to their investment. According to Claimants, the 2011 and 2013 Decisions were based on discretion, prejudice, and personal preference, which resulted in replacing a clear and coherent framework with a regulatory chaos³⁰⁹.
302. Claimants' proposition is untenable.
303. At the time, there was an ongoing debate as to whether municipalities could regulate Gaming Devices via Decrees pursuant to their right to self-government enshrined in the Constitution. As the Constitutional Court was tasked with interpreting the Constitution and deciding on questions of division of powers under the Constitution, it was entitled to adjudicate the matter, and it did so based on legal standards. The 2011 and 2013 Decisions were the result of reasoned judgment, and thus the Decisions were not arbitrary or unreasonable.

* * *

304. In light of the Tribunal's conclusion that there was no arbitrariness in either the manner municipalities have issued Decrees to regulate the Gaming Devices or the 2011 and 2013 Decisions, the Tribunal finds that there was no breach of Art. 2 of the BIT.

VII.1.2. DID THE CZECH REPUBLIC CREATE AND THEN BREACH LEGITIMATE EXPECTATIONS?

305. As a second argument to plead its case, Claimants say that the Czech Republic has breached their legitimate expectations, which are protected under the FET standard³¹⁰. The Czech Republic takes issue with these averments and argues that Claimants had no legitimate expectations when made their investments in the Czech Republic³¹¹.
306. The Tribunal will first analyze the Parties' positions (1. and 2.) and will then enter into a discussion (3.).

³⁰⁷ R II, para. 510, citing Doc. C-418, para. 8.4, and Doc. C-409, p. 3 *in fine*. See also HT, Day 4, p. 18, ll. 1-12 (██████████).

³⁰⁸ R II, para. 511, citing Docs. R-114, C-32, and ██████████ WS II, para. 42.

³⁰⁹ C II, para. 511.

³¹⁰ C-PHB, paras. 36-42; C I, Section V.B.2; C II, Section III.A.4.

³¹¹ R-PHB, paras. 77-79; R I, Section 4.1.2.1; R II, Section 4.1.3.3.

1. CLAIMANTS' POSITION

307. Claimants assert that the Czech Republic has failed to protect their legitimate expectations³¹². Claimants aver that it is widely recognized that respect for legitimate expectations is part of the FET standard. Claimants submit that, as put by the *Tecmed* tribunal, the FET standard entails a State's obligation to provide treatment that does not subvert the basic expectations that were taken into account by the foreign investor in making the investment³¹³.
308. First, Claimants assert that the relevant dates on which to assess their legitimate expectations are not limited to the dates of the initial investment, and that subsequent investments must also be considered³¹⁴.
309. In particular, Claimants submit that they purchased their shareholding interest in the Synot Group between 22 November 2006 and October 2009; after WCV's initial investment on 22 November 2006, they made further significant investments in the Synot Group via a series of transactions worth approximately EUR 27 million and two additional capital contributions facilitating the development and expansion of the Synot Group, worth approximately EUR 52 million³¹⁵.
310. Second, Claimants submit that they made their investments based on the following legitimate expectations:
- *First*, Claimants consider that they formed a legitimate expectation that the Ministry of Finance was the sole and exclusive regulator for the Terminals [the "**Exclusivity Representation**"]; Claimants argue that the Ministry of Finance continuously assured them that it was the sole regulator and that the municipalities had no regulatory competence³¹⁶; from March to October 2006, the Ministry of Finance, Synot TIP and SAZKA all obtained legal advice, which they shared with each other; the different legal opinions³¹⁷ expressed that the Ministry of Finance alone was responsible for regulating the Terminals; thereafter the Ministry of Finance released a formal decision dated 29 November 2006, which, in essence, confirmed that the Terminals were not WSMs and that Decrees did not apply to these devices³¹⁸.
 - *Second*, Claimants contend that they formed a legitimate expectation that the 2007 Master Permit would be renewed in 2017 to 2027 if Synot TIP complied with its terms [the "**Renewability Representation**"]; Claimants argue that the Ministry of Finance assured them that renewal of the 2007 Master Permit would be a non-discretionary exercise in verifying compliance with the law and that that assurance was reflected in the 2007 Master Permit itself³¹⁹.

³¹² C II, paras. 414-415.

³¹³ C II, paras. 414-415.

³¹⁴ C II, para. 419.

³¹⁵ C II, para. 420.

³¹⁶ C-PHB, para. 37; HT, Day 1, p. 88, l. 24 – p. 89, l. 5 [REDACTED].

³¹⁷ C I, para. 306. See also Docs. C-9, C-10, C-11, C-12, C-13, and C-93.

³¹⁸ C II, para. 82.

³¹⁹ C-PHB, para. 8.

311. Third, Claimants assert that they reasonably relied on the Czech Republic's representations in making their investments. According to Claimants, the Exclusivity Representation was made before Claimants had invested in the Czech Republic. As to the Renewability Representation, Claimants aver that it was made after WCV's initial investment in the Czech Republic, but before WCV made substantial additional investments and before CCL invested³²⁰.
312. Finally, Claimants argue that their legitimate expectations based on the Exclusivity Representation were breached because³²¹:
- As a consequence of the 2011 and 2013 Decisions of the Constitutional Court, the Lotteries Act was amended to the effect that municipalities could issue Decrees to regulate Gaming Devices;
 - Municipalities issued hundreds of Decrees that contradicted Location Permits previously issued by the Ministry of Finance; and
 - The Ministry of Finance decided to terminate and not to issue Location Permits that would conflict with Decrees.
313. As to the legitimate expectations based on the Renewability Representation, Claimants aver that Synot TIP was deprived of the opportunity to renew its 2007 Master Permit. Claimants submit that they were compelled to apply for a new Master Permit, which did not contain any authorization to operate the Terminals³²².

2. RESPONDENT'S POSITION

314. The Czech Republic claims that Claimants could not have had any legitimate expectations when they invested in the Czech Republic. The Czech Republic argues that expectations are legitimate only when they³²³:
- are reasonable in light of the surrounding circumstances; and
 - arise from specific assurances.
315. First, contrary to Claimants assertions, the Czech Republic denies that legitimate expectations can arise after an initial investment. With reference to *Crystallex*³²⁴, *Frontier Petroleum*³²⁵, *Infinito Gold*³²⁶, among others, the Czech Republic considers that only specific assurances granted to Claimants, in order to induce the initial investment, can constitute legitimate expectations³²⁷.

³²⁰ C-PHB, para. 38-39.

³²¹ C-PHB, para. 40.

³²² C-PHB, paras. 35 and 42.

³²³ R II, para. 466.

³²⁴ Doc. CL-16, *Crystallex*, para. 547.

³²⁵ Doc. CL-29, *Frontier Petroleum*, para. 468.

³²⁶ Doc. RL-303, *Infinito Gold*, para. 516.

³²⁷ R II, paras. 12 and 468-469. See also HT, Day 1, p. 226, l. 10 – p. 227, l. 8 (Professor Silva Romero).

316. Second, the Czech Republic submits that legitimate expectations cannot arise from contracts, licenses or permits nor from laws and regulations of general application. The Czech Republic stresses that, absent a specific obligation contained in a contract, license, or permit, none of these instruments can give rise to legitimate expectations. The Czech Republic refers to *Total*, where the tribunal found that an expectation was legitimate only if³²⁸:

“the host State has explicitly assumed a specific legal obligation for the future, such as contracts, concessions or stabilization clauses on which the investor is therefore entitled to rely as a matter of law”.

317. Third, the Czech Republic argues that Claimants could not have formed any expectations at the time of their investment on 22 November 2006, for the following reasons:

- *First*, there was a reasonable possibility that municipalities would play a meaningful role in regulating Gaming Devices to best account for issues of local public order³²⁹;
- *Second*, the representations on which Claimants rely ignore the dispute between the Ministry of Finance and the municipalities and the Constitutional Court’s role in resolving it; the Ministry of Finance’s 30 October 2006 decision was only testament to the role municipalities were playing at that time in the approval process; Claimants distort the content of the legal opinions, which were not representations made by the Czech Republic and which could not have given rise to representations attributable to the State; the assurances were given on the basis of the law as it was known at that time³³⁰; and
- *Third*, the Czech Republic contends that the 2004 and 2007 Master Permits could not give rise to legitimate expectations, as they did not contain any specific assurances³³¹.

318. Finally, the Czech Republic argues that Claimants invested in the Czech Republic without carrying out proper due diligence. The Czech Republic takes issue with Claimants’ reliance on the legal opinions as part of a due diligence exercise. Respondent states that, had Claimants carried out the due diligence expected of sophisticated international investors, they would have known that³³²:

- the competence to regulate gambling was shared between the municipalities and the Ministry of Finance;
- the scope of their respective competences was not settled with respect to the Gaming Devices; and

³²⁸ R II, para. 470-471.

³²⁹ R II, para. 474.

³³⁰ R II, para. 477.

³³¹ R II, para. 478.

³³² R II, paras. 15-33.

- the ongoing debate could be resolved in favor of the municipalities through evolving Ministry practices, legislative amendments or by the Courts.

3. **DISCUSSION**

319. The Tribunal will first summarize the relevant facts (3.1), then establish the applicable legal principles (3.2) and make its decisions (3.3).

3.1 **SUMMARY OF RELEVANT FACTS**

320. In early 2006, a number of municipalities disagreed with the interpretation that the Lotteries Act did not grant them regulatory power over Terminals in their territory³³³. Over the course of that year, various operators together with the Ministry of Finance sought several legal opinions to evaluate the municipalities' involvement in regulating the Terminals. Namely, Synot TIP commissioned two legal opinions from Toman, Devátý & Partners³³⁴ (A.), another operator, SAZKA, commissioned the opinion from the Institute of State and Law Academy of Sciences of the Czech Republic³³⁵ (B.), and the Ministry of Finance commissioned a further three opinions from Dr. Korbela, PricewaterhouseCoopers and White & Case³³⁶ (C.). Finally, the Ministry of Finance and the Ministry of Internal Affairs directly provided Claimants with their opinions on the municipalities' role in regulating Location Permits³³⁷(D.).

A. **Toman, Devátý & Partners' two legal opinions commissioned by Synot TIP**

Toman, Devátý & Partners' first legal opinion

321. In its first legal opinion dated 21 March 2006, the law firm Toman, Devátý & Partners considered whether³³⁸:

- The authorization in Section 50(4) of the Lotteries Act, under which municipalities could issue Decrees regulating or limiting gambling activities, included devices other than WSMs; and
- The Ministry of Finance was entitled to refuse to license Terminals on the basis that the municipality had issued a Decree limiting the operation of WSMs.

³³³ R I, para. 84-87, citing to ██████████ WS I, para. 24. See also C I, paras. 115-116; and Doc. C-92, p. 2.

³³⁴ Doc. C-9; Doc. C-93.

³³⁵ Doc. C-10.

³³⁶ R I, para. 94.

³³⁷ Doc. C-102; Doc. C-103; Doc. C-15; C II, paras 82, 429(a) and (c); R I, paras. 499-500; HT, Day 1, p. 64 l. 15 – p. 65, l. 20 ██████████ .

³³⁸ Doc. C-9.

322. In connection with the first issue, the authors concluded that the authorization provided for in Section 50(4) of the Lotteries Act did not allow municipalities to regulate Terminals via Decrees³³⁹.
323. As regards the second issue, the opinion, relying on case law of the Czech Supreme Court and Prague High Court, indicated that when the Ministry of Finance granted a permit, it could establish terms and conditions different than those in the Lotteries Act (*i.e.*, the Ministry of Finance could take into account Decrees in the granting of a permit even if such possibility was not included in the law)³⁴⁰. The opinion, however, concluded that it would be incorrect for the Ministry of Finance to refuse to license Terminals if a Decree limited the operation of WSMs, as it would contravene Art. 4(1) of the Charter of Fundamental Rights and Freedoms³⁴¹.

Toman, Devátý & Partners' second legal opinion

324. On 20 July 2006 Toman, Devátý & Partners issued a brief second legal opinion in which they discussed the definition and specific content of “public order” in connection with Section 4(2) of the Lotteries Act. After providing a definition of the said term, the report concluded that it was for the Ministry of Finance to decide whether the location of Terminals in the territory of a municipality could disturb public order³⁴².

B. The Institute of State and Law Academy of Sciences of the Czech Republic's legal opinion commissioned by SAZKA

325. On 15 April 2006 the Institute of State and Law Academy of Sciences of the Czech Republic, a State-funded public research institution, provided a legal opinion to SAZKA on Section 50(4) of the Lotteries Act and on some related questions concerning the legal regime governing the Terminals³⁴³.
326. The report established that municipalities were entitled to prohibit or restrict gambling via Decrees but only in relation to WSMs³⁴⁴. The report also determined that the legal description provided for in the Lotteries Act made clear that Terminals could not be considered WSMs. For these reasons, the legal opinion concluded that municipalities were not authorized to regulate the operation of Terminals by Decrees³⁴⁵.

³³⁹ Doc. C-9, Section 3.1.

³⁴⁰ Doc. C-9, Section 3.2.7.

³⁴¹ Doc. C-9, Section 3.2. See also R I, para. 95.

³⁴² Doc. C-93.

³⁴³ Doc. C-10. See also C I, para. 118(b).

³⁴⁴ Doc. C-10, p. 2.

³⁴⁵ Doc. C-10, pp. 2-3.

C. Dr. Korbel's, PricewaterhouseCoopers' and White & Case's legal opinions commissioned by the Ministry of Finance

Dr. Korbel's legal opinion

327. On 25 August 2006, Dr. Korbel issued a legal opinion for the Ministry of Finance in which he assessed whether three Location Permits issued by the Ministry of Finance were in compliance with Section 50(3) of the Lotteries Act³⁴⁶. The opinion confirmed that these decisions were indeed issued in accordance with the law and that it was for the Ministry of Finance to decide whether games would be licensed³⁴⁷. Dr. Korbel's opinion further noted that the Ministry of Finance had discretion in regulating the Gaming Devices and that it was wholly entitled to involve municipalities in the process to the extent it considered appropriate³⁴⁸.
328. Notably, the referenced legal opinion contained a caveat³⁴⁹:

"I would like to emphasize that the above contains the legal opinion of our office, which may differ for example from the opinion of a court, should any of your decisions be challenged at court".

PricewaterhouseCoopers' legal opinion

329. The opinion prepared by PricewaterhouseCoopers, dated 27 October 2006, recognized that the Ministry of Finance's competence to grant Location Permits for Terminals was questioned by municipalities on the basis of Section 50(4) of the Lotteries Act³⁵⁰.
330. The report concluded that, based on the Lotteries Act, municipalities were not permitted to issue Decrees that might interfere with Location Permits granted by the Ministry of Finance for Terminals³⁵¹. However, the report also mentioned the existence of a Senate Bill, which, if enacted, would authorize municipalities to regulate Terminals³⁵².

White & Case's legal opinion

331. Similarly, on 30 October 2006, White & Case provided the Ministry of Finance with a legal opinion, which addressed³⁵³:
- Who and under what circumstances was entitled to issue licenses for Terminals; and

³⁴⁶ Doc. C-11.

³⁴⁷ Doc. C-11.

³⁴⁸ Doc. C-11. See also R I, para. 95.

³⁴⁹ Doc. C-11.

³⁵⁰ Doc. C-12, pp. 1-2.

³⁵¹ Doc. C-12, p. 7.

³⁵² Doc. C-12, pp. 7-8.

³⁵³ Doc. C-13.

- Whether municipalities within their self-government competences were entitled to issue Decrees governing the terms and conditions for operation of Terminals.

332. As to the first issue, the report was inclined to the opinion that it was for the Ministry of Finance to license Terminals. White & Case believed that the Terminals were not specifically mentioned in Section 2 of the Lotteries Act and, therefore, they qualified as innominate games, which were regulated by the Ministry of Finance³⁵⁴.
333. At the same time, White & Case expressly mentioned that they could not exclude a different interpretation³⁵⁵:

“Although we cannot completely exclude a different interpretation, based on the above we believe that the System represents a lottery or another game not specifically mentioned in Section 2 of the Lotteries Act, however if showing the above characteristics and satisfying the above conditions, only the MoF can license operation of the System its decision in accordance with and pursuant to Section 50(3) of the Lotteries Act”.

[Emphasis added]

334. As to the second issue, White & Case opined that municipalities were not permitted to issue Decrees to regulate the operation of Terminals, and that such an interpretation did not have adequate support in the relevant legislation.
335. Once again, the legal opinion admitted that contrary opinions on this question might not be precluded³⁵⁶:

“Based on the above, we believe that the interpretation admitting that municipalities are within their self-government competence entitled to issue generally binding decrees governing the terms and conditions for operation of the [Terminals] within their territory, does not have an adequate support in the relevant legislation, although contrary opinions on this question may not be precluded”.

[Emphasis added]

D. Decisions from the Ministry of Finance

336. In 2006 certain municipalities had filed a request before the Ministry of Finance to have Claimants’ 2004 Master Permit amended in view of their public order concerns. The Ministry of Finance disavowed their request: on 30 October 2006 it suspended the amendment procedure, arguing that the requested amendments were contrary to the law³⁵⁷.
337. Two months later, on 29 November 2006, the Ministry of Finance granted Synot TIP’s application for the inclusion of additional Location Permits in the 2004

³⁵⁴ Doc. C-13.

³⁵⁵ Doc. C-13, p. 3.

³⁵⁶ Doc. C-13, p. 4. See also R I, para. 95.

³⁵⁷ Doc. C-102. See also C II, para. 429(a); and R I, paras. 499-500.

Master Permit, despite the existence of a Decree prohibiting the operation of WSMs³⁵⁸. The Ministry of Finance supported its decision by stating that³⁵⁹:

- The Terminals demonstrated fundamental differences from the statutory definition of WSMs; and
- Decrees issued by the municipalities concerning WSMs were of no relevance for the operation of the Terminals.

338. Finally, on 26 March 2007, the Ministry of Internal Affairs released a formal position paper on the scope of municipalities' powers, concluding that they could regulate WSMs but not Terminals³⁶⁰:

“In case the municipality issued a generally binding decree under Section 10(d) of the Act No. 128/2000 Sb., on Municipalities (the Municipal Order), as amended (the “Municipalities Act”), and in accordance with Section 50(4) or 17(11) of the Lotteries Act, this generally binding decree shall only concern restriction of operation of the winning slot machines. Based on the cited provisions, the lotteries or similar games under Section 50(3) of the Lotteries Act, that are licensed by the Ministry of Finance, cannot be restricted”.

3.2 APPLICABLE LEGAL PRINCIPLES

339. Art. 2(2) of the BIT, like most investment treaties, does not explicitly refer to “legitimate expectations” as such. Nevertheless, the Parties accept that the obligation to accord FET to investments encompasses the protection of an investor's legitimate expectations – but discuss the requirements for the creation of legitimate expectations and the consequences of their creation³⁶¹.

340. Legitimate expectations arise when a State makes representations or commitments or gives assurances, upon which the foreign investor (in the exercise of an objectively reasonable business judgment) relies, and their frustration occurs when the State thereafter changes its position, to one against those expectations, in a way that causes injury to the investor³⁶². The protection of legitimate expectations is closely connected with the principles of good faith, estoppel and the prohibition encapsulated in the maxim *venire contra factum proprium*.

341. The Tribunal finds that for a breach of legitimate expectations to be found:

- First, such a legitimate expectation must be deemed to have arisen (i); and
- Second, such expectation must be deemed to have been violated by the State in a manner that was disproportionate given the circumstances of the case (ii).

³⁵⁸ Doc. C-103, pp. 2-3. See also C II, para. 82.

³⁵⁹ Doc. C-103, pp. 2-3. See also C II, para. 82.

³⁶⁰ Doc. C-15, p. 1. See also C II, para. 429(c); and HT, Day 1, p. 64, l. 15 – p. 65, l. 20 (██████████) .

³⁶¹ C II, para. 413; and R II, para. 466.

³⁶² Doc. CL-66, *Tecmed*, para. 154; and Doc. CL-236, *ECE*, para. 4.762.

342. (i) The Tribunal considers that the following elements must be met for a legitimate expectation to arise:
- The existence of a specific representation by the State – general laws on their own cannot give rise to legitimate expectations;
 - The timing of the specific representation by the State – it must be assessed at the time of making the investment, and not at a later stage; and
 - Objective circumstances and reasons which warrant the creation of a legitimate expectation – it is not sufficient for an investor to claim that it subjectively had such an expectation.
343. (ii) Once the existence of a legitimate expectation is established, the next step is to weigh its reasonableness against the State’s sovereign right to regulate; in such balancing exercise, the relevant factors include the investor’s own conduct, and the political, socioeconomic, cultural, and historical conditions in the Host State.

Case law

344. The Tribunal’s findings are confirmed by the case law referred to by the Parties.
345. First, as decided in *Tecmed*³⁶³, *Lemire*³⁶⁴, *Frontier Petroleum*³⁶⁵, and *Enron*³⁶⁶ an investor’s expectations must be analyzed at the time of making the investment. Such assessment must be made objectively, considering all relevant circumstances, and not subjectively. In other words, the Tribunal must determine what a prudent investor could have expected in the same circumstances, considering the information that the investor had or ought to have had at that moment.
346. Second, as regards the sources of legitimate expectations, *Crystallex*³⁶⁷, *Total*³⁶⁸ and *OKO Pankki*³⁶⁹ have explained that a State can only create potential expectations *vis-à-vis* foreign investors when specific representations are made, or assurances are given by the State to an investor (or a narrow class of investors or potential investors) to induce foreign investment. These specific assurances or representations become undisputedly binding upon the State³⁷⁰.

³⁶³ Doc. CL-66, *Tecmed*, para. 154.

³⁶⁴ Doc. CL-39, *Lemire*, paras. 264-265.

³⁶⁵ Doc. CL-29, *Frontier Petroleum*, paras. 287-288 and 468.

³⁶⁶ Doc. CL-26, *Enron*, para. 262.

³⁶⁷ Doc. CL-16, *Crystallex*, para. 547.

³⁶⁸ Doc. CL-67, *Total*, para. 117.

³⁶⁹ Doc. RL-175, *OKO Pankki*, para. 247.

³⁷⁰ The questions whether the investor relied on the expectation of stability of the State’s general legislative and regulatory framework when deciding to invest, and whether a reform of the framework might result in a breach of the investor’s regulatory legitimate expectations, are two far more controversial issues. However, the Claimants aver that they received specific assurances from different organs in the Czech Republic and, thus, these controversial issues are irrelevant now.

347. Third, the legitimacy or reasonableness of the investor's expectations must be assessed in conjunction with other circumstances. As the *Duke Energy* tribunal explained, particularly important are the investor's own conduct, and the political, socioeconomic, cultural, and historical conditions in the host State³⁷¹.

3.3 DECISION OF THE TRIBUNAL

348. Claimants aver that the Czech Republic breached their legitimate expectations because they had made their investment relying on several representations and assurances from the Czech Republic³⁷²:

- Several legal opinions commissioned by Synot TIP, SAZKA and the Ministry of Finance, which confirmed that Terminals were not WSMs and that the Ministry of Finance alone was responsible for regulating Terminals;
- The 2004 and 2007 Master Permits, which granted Claimants enforceable rights to operate Terminals; and
- The representations made by the Ministry of Finance and the Ministry of Internal Affairs confirming that the Ministry of Finance alone was responsible for regulating Terminals.

349. In turn, the Czech Republic submits that general statements in the law, licenses, permits, or contracts cannot give rise to legitimate expectations³⁷³, and that Claimants could have had no legitimate expectations, for three reasons³⁷⁴:

- Those expectations did not exist and were not relied upon at the time Claimants made their investment;
- Any such expectations could not be legitimate because the regulatory framework was evolving from the time of the investment through the Constitutional Court judgments; and
- Any such expectations could not be legitimate because the Czech Republic never made any clear and specific representation to Claimants on which they relied on.

350. Claimants' arguments focus on two representations given by the Czech Republic prior to their investment that allegedly gave rise to their legitimate expectations, namely that the Terminals would be regulated exclusively by the Ministry of Finance [previously defined as the "**Exclusivity Representation**"] (A.), and that the permits would be automatically renewed [previously defined as the "**Renewability Representation**"] (B.).

³⁷¹ Doc. CL-20, *Duke Energy*, para. 340.

³⁷² C II, para. 417.

³⁷³ R I, para. 452; and R II, paras. 470-471.

³⁷⁴ R I, para. 463.

A. The Exclusivity Representation

351. The Tribunal must first address whether the Czech Republic made the Exclusivity Representation or gave specific assurances to Claimants to that precise effect.
352. The answer must necessarily be in the negative.
353. According to Claimants, the Exclusivity Representation was made in the form of six different legal opinions, which expressed that the Ministry of Finance alone was responsible for regulating Terminals³⁷⁵.
354. The Tribunal notes that those legal opinions constitute proof that Claimants did perform due diligence prior to making their investment. However, these opinions were issued by independent lawyers and, as such, they did not constitute representations or specific assurances made by the State and could not bind the Czech Republic.
355. Even if the Tribunal were to reach the opposite conclusion (*quod non*), most of the six legal opinions included caveats or disclaimers as to their accuracy. For instance:
- Toman, Devátý & Partners' first legal opinion mentioned that the Ministry of Finance could stipulate terms and conditions which would be beyond the Lotteries Act³⁷⁶; its second opinion referred to the possibility of an independent court potentially reaching a different conclusion upon scrutiny of the term "public order"³⁷⁷;
 - Dr. Korbel's legal opinion noted that the Ministry of Finance had discretion in regulating the Gaming Devices and that it was wholly entitled to involve municipalities in the permitting process to the extent it considered appropriate; the opinion also contained a warning that Courts' opinions on the matter could differ³⁷⁸;
 - PricewaterhouseCoopers' legal opinion recognized that the Ministry of Finance's competence to grant Location Permits was being questioned by municipalities and mentioned the existence of a Senate Bill, which, if enacted, would authorize municipalities to regulate CLS/IVT devices³⁷⁹; and
 - White & Case's legal opinion expressly mentioned that they could not completely exclude different interpretations to those made in their analysis, and that contrary opinions could not be precluded³⁸⁰.
356. The Tribunal further notes that none of the legal opinions provided any warranty or even made comments to the effect that the law would not develop³⁸¹. To the

³⁷⁵ Docs. C-9, C-10, C-11, C-12, C-13, and C-93. See also C I, para. 306.

³⁷⁶ Doc. C-9.

³⁷⁷ Doc. C-93, p. 2 of the PDF.

³⁷⁸ Doc. C-11.

³⁷⁹ Doc. C-12.

³⁸⁰ Doc. C-13.

³⁸¹ Docs. C-9, C-93, C-10, C-11, C-12, and C-13. See also R I, para. 96.

contrary, multiple legal opinions expressly mentioned that they were subject to the views of the Czech Courts. Therefore, Claimants should have known that the legal opinions simply described the law in the manner that the respective authors considered it to be at the time of their issuance and that Czech Courts could differ in their interpretation³⁸².

357. Summing up, the Tribunal dismisses Claimants' argument that the several legal opinions conferred upon them the legitimate expectation that the Ministry of Finance was the sole and exclusive regulator for the Terminals.

B. The Renewability Representation

358. Claimants argue that they formed a second legitimate expectation, namely that the 2007 Master Permit would be renewed until 2027 if Synot TIP complied with its terms. The Renewability Representation, as per Claimants, arose from the terms reflected in the 2007 Master Permit itself³⁸³. Claimants contend that their legitimate expectation was violated when they were deprived of the opportunity to renew their 2007 Master Permit as it stood (*i.e.*, including Location Permits which authorized Terminals in specific locations)³⁸⁴.
359. The Tribunal finds that the 2007 Master Permit did not confer any such legitimate expectations to Claimants.
360. First, contrary to what Claimants assert, a careful reading of the 2007 Master Permit clearly shows that the Ministry of Finance did not provide any specific assurances to Synot TIP as to its renewability. The 2007 Master Permit stated in clear and unequivocal terms that the operator could apply for an extension of the validity of the permit, but this application, far from being automatic, as Claimants submit, was to be assessed in a separate administrative proceeding³⁸⁵:

“This permit is valid until 31 December 2017. No later than 2 months prior to the expiration of the validity hereof, the operator may apply to the Ministry of Finance for extension of the validity of the permit. The Ministry of Finance shall assess such application in a separate administrative proceeding, under which the applicant shall comply with all then applicable terms and conditions of the law for issuance of the respective permit”.

[Emphasis added]

361. The language of the permit is plain: the Ministry of Finance “shall assess” such application. In any case, the Tribunal notes that upon the expiration of the 2007 Master Permit on 31 December 2017, it was replaced by the 2017 Master Permit, which is valid until 19 August 2023³⁸⁶.
362. Second, the Tribunal is equally unconvinced by Claimants' assertions that they received specific assurances to have their 2007 Master Permit renewed as it stood;

³⁸² Docs. C-11, p. 2, and C-93, p. 2. See also R II, para. 108.

³⁸³ C-PHB, para. 37(b), referring to para. 8.

³⁸⁴ C-PHB, para. 42, referring to para. 35(c).

³⁸⁵ Doc. C-17, p. 25.

³⁸⁶ Doc. C-423. See also ██████████ WS II, para. 51.

that is, maintaining the number of Location Permits which licensed Terminals in specific places.

363. The language of the 2007 Master Permit on which Claimants rely shows no such specific commitments by the Czech Republic. To the contrary, the wording of the permit clearly stated that additional Location Permits would be approved “on the basis of a uniform procedure”³⁸⁷:

“Operation of other IVTs in any new or existing Gaming Centres shall be approved by amending (extending) this permit on the basis of a uniform procedure”.

[Emphasis added]

364. Claimants never received a specific assurance from the Czech Republic that they would maintain a specific number of Location Permits, as the approval of specific locations in which Terminals could be operated was subject to further administrative proceedings.

365. In any event, the Tribunal notes that Claimants have maintained a varying number of Location Permits since they originally invested in the Czech Republic: from initially three Location Permits under the original 2004 Master Permit³⁸⁸, Synot TIP reached over 4,000 Terminals at the end of 2011³⁸⁹, a number which was reduced to 849 Terminals by October 2021³⁹⁰.

366. As such, even if the Tribunal had found that Claimants had received specific assurances as to the operation of Terminals in the Czech Republic (*quod non*), the Tribunal would still be unconvinced, as Claimants:

- Have recently still been operating more than 800 Terminals; and
- There was no specific assurance regarding the minimum number of Terminals.

367. In light of the above, the Tribunal concludes that Claimants did not receive specific assurances from the Czech Republic in order to induce their investments. Therefore, the Tribunal finds that Claimants did not have legitimate expectations which would have amounted to a breach of the FET assumed by the Czech Republic under the BIT.

* * *

368. Summing up, there was no breach of legitimate expectations, as no such expectations ever arose on Claimants’ part: the Czech Republic never made any representation to Claimants that they would be able to renew the 2007 Master Permit and that it would be renewed as it stood (*i.e.*, maintaining a certain number of Location Permits, which authorized Terminals in specific places). In any event,

³⁸⁷ Doc. C-17, p. 2. See also R II, para. 480.

³⁸⁸ Doc. C-7.

³⁸⁹ ████████ WS II, paras. 46 and 51; and H-M-1, slide 5.

³⁹⁰ ████████ WS III, para. 38; and HT, Day 2, p. 154, ll. 2-25 (██████) .

the current situation demonstrates that Synot TIP renewed its 2007 Master Permit and has recently been operating more than 800 IVTs in the Czech Republic.

**VII.1.3. DID THE CZECH REPUBLIC FAIL TO PROTECT CLAIMANTS’
ACQUIRED RIGHTS?**

369. As a third argument, Claimants say that the Czech Republic did not respect their acquired rights, as formalized in the 2007 Master Permit issued by the Ministry of Finance³⁹¹: the 2013 Decision annulled the already inadequate three-year transitional period contained in the 2011 Amendment to the Lottery Act, leaving operators immediately exposed to the effect of possible Decrees issued by municipalities³⁹².
370. The Czech Republic argues that Claimants had no acquired rights whatsoever and that the 2013 Decision, which disapplied the transitional period, caused no negative effect, as Claimants benefitted from a *de facto* transitional period of equivalent length³⁹³.
371. The Tribunal will first analyze the Parties’ positions (1. and 2.) and then enter into a discussion (3.).

1. CLAIMANTS’ POSITION

372. Claimants submit that the protection of acquired rights is a fundamental principle of general international law recognized by international tribunals³⁹⁴. They add that acquired rights in relation to investments must also be protected³⁹⁵. Host States are obliged to compensate investors for the deprivation of an acquired right or for any interference with its use and enjoyment, even by regulatory amendments that otherwise are reasonable³⁹⁶.
373. In the specific circumstances of this case, Claimants argue that the 2007 Master Permit issued by the Ministry of Finance for the operation of Gaming Devices was valid and binding and created acquired rights to undertake the activities authorized by such Permits³⁹⁷. While the Czech Republic was at liberty to change its regulatory framework for lotteries, acquired rights ought to have been respected, in accordance with the doctrine of respect for acquired rights and the FET standard³⁹⁸.
374. The Czech Republic, however, failed to protect Claimants’ acquired rights:

³⁹¹ C II, para. 411.

³⁹² C II, para. 411(c).

³⁹³ R-PHB, paras. 44-57.

³⁹⁴ C II, paras. 376-383.

³⁹⁵ C II, para. 384.

³⁹⁶ C II para. 384.

³⁹⁷ C II, para. 409.

³⁹⁸ C II, para. 410.

- The Constitutional Court's 2011 Decisions should have been issued prospectively, such that the Decrees issued by the municipalities did not affect existing Location Permits³⁹⁹;
- The three-year transitional period provided for in the 2011 Amendment to the Lotteries Act was inadequate⁴⁰⁰;
- The Constitutional Court annulled the already inadequate three-year transitional period, thereby immediately exposing permit holders to the effects of Decrees⁴⁰¹; and
- Municipalities issued Decrees restricting gaming in their territories, which in turn resulted in the withdrawal of Location Permits affected by such Decrees⁴⁰².

2. **RESPONDENT'S POSITION**

375. The Czech Republic does not contest that the notion of acquired rights is a fundamental principle of public international law and that an unlawful expropriation of acquired rights must be indemnified⁴⁰³. However, the Czech Republic asserts that acquired rights are not "*per se* protected" under the BIT: the notion of acquired rights is only relevant as a prerequisite either for a finding that there is a breach of legitimate expectations or for a finding of unlawful expropriation⁴⁰⁴.
376. In any event, Respondent says that Claimants' contention is wrong for various reasons.
377. First, Claimants failed to demonstrate that they had any acquired rights⁴⁰⁵.
378. The existence of acquired rights is governed by the national laws of the host State, and investment tribunals should rely on decisions of the domestic courts regarding the existence of acquired rights⁴⁰⁶.
379. Respondent says that, from a factual perspective, it could not have failed to protect acquired rights as Claimants had no acquired rights⁴⁰⁷. Claimants' Permits were issued pursuant to the Lotteries Act, which in Section 43 provides that Permits may be revoked if "there occur or become known circumstances for which it would not

³⁹⁹ C II, para. 411(a).

⁴⁰⁰ C II, para. 411(b).

⁴⁰¹ C II, para. 411(c).

⁴⁰² C II, para. 411(d) and (e).

⁴⁰³ R II, para. 448.

⁴⁰⁴ R II, para. 440. See also Doc. RL-307, p.49.

⁴⁰⁵ R II, para. 442.

⁴⁰⁶ R II, paras. 443-445.

⁴⁰⁷ R II, para. 456.

have been possible to license the lottery or similar game”. Claimants never obtained any acquired right⁴⁰⁸.

380. The Czech Republic notes that Claimants cannot base their claim on the rights arising from the Master Permits, as these permits did not allow the operation of devices⁴⁰⁹. The Decrees only canceled Location Permits, and such Permits could not give rise to acquired rights under Czech law, as they could be amended or canceled “in light of local public order issues pursuant to Art. 43(1) of the Lotteries Act”⁴¹⁰.
381. The rights of the operator do not rest on a special title of acquisition but “[derive] only from a statutory provision [and] could also be taken away by a statutory provision”⁴¹¹. Under Section 43, Location Permits could be revoked in light of local public order issues⁴¹².
382. Second, Claimants failed to rely on relevant case law confirming that interference with acquired rights can lead to an independent breach of FET⁴¹³; moreover, the State’s right to regulate is not subject to its obligation to protect acquired rights⁴¹⁴.
383. Third, Claimants’ reasoning that acquired rights survive changes in the law and must therefore be protected by new laws is wrong; in addition, there are no new laws in the present case, as the Constitutional Court clarified an already-existing law⁴¹⁵. In any event, even if there were such new laws, the Czech Republic maintains that Claimants’ argument is based on “a confusion between the concept of retroactivity and the principle of immediate application”⁴¹⁶.
384. In any event, the Czech Republic maintains that the 2011 Decisions merely clarified what the correct interpretation of the Lotteries Act was in light of the Czech Constitution. Therefore, they could not have violated any acquired rights⁴¹⁷.
385. Fourth, the Czech Republic contends that the cancellation of a three-year transitional period could not have affected acquired rights under Czech law, as the adoption of such a period was in breach of Czech law⁴¹⁸.
386. Finally, Respondent says that “[i]n any event, Claimants benefitted from a [transitional] period before their permits were revoked”⁴¹⁹.

⁴⁰⁸ R II, para. 456.

⁴⁰⁹ R II, para. 458.

⁴¹⁰ R II, para. 461; and [REDACTED] ER III, para. 157.

⁴¹¹ R II, para. 457; and Doc. CL-285, P.4.

⁴¹² R II, para. 461.

⁴¹³ R II, para. 449.

⁴¹⁴ R II, paras. 451-452.

⁴¹⁵ R II, para. 454.

⁴¹⁶ R II, para. 455.

⁴¹⁷ R II, paras. 462-463.

⁴¹⁸ R II, para. 464.

⁴¹⁹ R II, para. 464.

3. DISCUSSION

387. The Tribunal will again first summarize the relevant facts (3.1), then establish the applicable legal principles (3.2) and make its decisions (3.3).

3.1 SUMMARY OF RELEVANT FACTS

388. On 31 December 2007, the Ministry of Finance issued the 2007 Master Permit, which authorized Synot TIP to operate, during a ten-year period, an electronic lottery system with a central control unit⁴²⁰. The Master Permit also included 465 Location Permits, which authorized Claimants to install Terminals belonging to that lottery system at certain gaming centers, whose names and addresses were included in a long list in Section 6 of the Master Permit⁴²¹.

389. Over the years, Synot TIP gradually sought to develop its business by installing additional Terminals in new locations. The installation required a specific Location Permit, which Claimants obtained by requesting that the Ministry of Finance amend the Master Permit, to include a specific reference to the name and address of the new gaming center⁴²²; Synot TIP eventually held Location Permits for more than 4,000 Terminals⁴²³.

390. The Constitutional Court's 2011 Decisions changed the regulatory landscape: the Court held that municipalities were entitled to issue Decrees restricting the operation of Terminals in their territories and that, upon the issuance of a restrictive Decree, the Ministry of Finance was obliged to forthwith terminate incompatible Location Permits⁴²⁴.

391. To comply with the Constitutional Court's 2011 Decisions, in October of that year the Czech Parliament promulgated the 2011 Amendment to the Lotteries Act, which acknowledged the municipalities' right to issue restrictive Decrees, and the Ministry's obligation to withdraw conflicting Location Permits. However, the 2011 Amendment included a provision – Section 51(4) – grandfathering Location Permits issued prior to 1 January 2012: these Permits would continue in force for three years (until 31 December 2014) and in the meantime would not be affected by Decrees issued by municipalities⁴²⁵.

392. The 2011 Amendment did not survive a constitutional challenge. On 2 April 2013, the Constitutional Court, acting as a negative legislator, annulled the three-year transitional period provided for in Section 51(4), declaring the provision to be contrary to the Constitution⁴²⁶.

393. A number of municipalities decided to issue Decrees restricting or prohibiting the installation and operation of Terminals. In these cases, the Ministry of Finance

⁴²⁰ ████████ WS I, para. 40.

⁴²¹ Doc. C-17, p. 26; and ████████ WS I, para. 47.

⁴²² Doc. C-17, para. 4.

⁴²³ ████████ WS II, para. 46.

⁴²⁴ ████████ ER I, para. 11.

⁴²⁵ Doc. C-28, Section 51(4).

⁴²⁶ Doc. C-30.

became obliged to start the administrative process of cancelling Claimants' Location Permits, which were in contradiction with the Decrees⁴²⁷. In the course of 2013, Department 34 initiated the lengthy administrative process of revoking these permits⁴²⁸. The process, which included an administrative appeal before the Ministry of Finance, took on average between one year and a half and two years. While the process was progressing, the Location Permits remained in force, and the Terminals could still be operated⁴²⁹.

394. The 2007 Master Permit remained valid and in force until its expiry date⁴³⁰.

3.2 APPLICABLE LEGAL PRINCIPLES

395. The respect for vested or acquired rights forms part of the generally accepted principles of international law. In the frequently quoted statement of the *Aramco* tribunal⁴³¹:

“The principle of respect of acquired rights is one of the fundamental principles both of public international law and of the municipal law of most civilized States”.

396. Acquired rights, to exist, must be vested (under a contract, license or some other instrument embodying individual rights) in accordance with municipal law. Once created, international law protects acquired rights against executive or legislative impairment or nullification.

397. The protection is not absolute: States enjoy sovereign powers to enact new legislation in furtherance of the common good. If such legislation impairs or annuls acquired rights, the principle of protection requires that the State adopt reasonable and proportionate measures to compensate the holder, either by establishing a transitional period of a reasonable duration, during which the acquired rights can still be enjoyed, or by some other measure that sets off the loss suffered.

398. International case law supports this conclusion.

399. The CJEU in its *Berlington v. Hungary* decision established that when a State revokes previously granted licenses, it must provide a transitional period of sufficient length to enable the permit holders to adapt to the new scenario⁴³²:

“when the national legislature revokes licences that allow their holders to exercise an economic activity, it must provide, for the benefit of those holders, a transitional period of sufficient length to enable them to adapt or reasonable compensation system”.

⁴²⁷ R II, para. 234; and ██████████ WS, paras. 17-19.

⁴²⁸ ██████████ á WS, paras. 17-19.

⁴²⁹ R II, para. 236; and ██████████ WS, para. 21.

⁴³⁰ ██████████ WS II, para. 51; and ██████████ WS, para. 19.

⁴³¹ Doc. CL-301, *Aramco*, p. 205.

⁴³² Doc. CL-10, *Berlington*, para. 85.

400. Similarly, in *Vékony v. Hungary*, the European Court of Human Rights [“ECtHR”] established that, in the context of a business benefiting from a tobacco retail license for nearly 20 years, a transitional period of 10 months – between the enactment of the impugned law and the deadline for terminating the tobacco activities – “can hardly be regarded as sufficient”, and consequently declared the obligation of Hungary to compensate the holder of the acquired right⁴³³.

Protection under investment law

401. The general international law principle of protection of acquired rights also extends to situations where an investor holds a permit or authorization to carry out entrepreneurial activities in the host State. Investment arbitration tribunals have accepted that authorizations of this type may give rise to acquired rights. In the classic rendering by the *AMCO* tribunal⁴³⁴:

“Moreover, independently from *pacta sunt servanda* and its logically and morally necessary extension in the present case, another principle of international law can be considered to be the basis of the Republic’s international liability: it is the principle of respect of *acquired rights* [...] Indeed, by receiving the authorization to invest, Amco was bestowed with acquired rights (to realize the investment, to operate it with a reasonable expectation to make profit and to have the benefit of the incentives provided by law)”.

402. Investment arbitration tribunals have also acknowledged that sovereign States have the right to enact new legislation and that subsequent regulatory changes must respect vested rights properly created under municipal law⁴³⁵. In the words of the *Magyar Farming* tribunal⁴³⁶:

“If a general statute gives private parties a possibility to acquire rights of economic value, changes to that legislation should not affect rights that had already been acquired under the statute. In this sense, the doctrine of vested rights is closely intertwined with the principles of non-retroactivity and legal certainty”

[...]

“Thus, while the Respondent was at liberty to change its laws and remove or otherwise alter the provision allowing to enter into a lease agreement and acquire a statutory pre-lease right, the private parties who had previously availed themselves of this possibility by entering into specific lease agreements had vested rights that ought to have been respected”.

⁴³³ C-PHB, para. 40(d), footnote no. 205, citing *Vékony*, para. 34.

⁴³⁴ Doc. CL-270, *Amco*, para. 248.

⁴³⁵ Doc. CL-13, *CME*, para. 533: “The Czech Republic and/or the Media Council are as a matter of principle not debarred from amending or altering the basis for CME’s investment, subject to acquired rights and treaty obligations. This is a question of the Czech Republic’s national sovereignty. However, any such action should have been done under due process of law, providing just compensation to the deprived investor (Art. 5 of the Treaty)”.

⁴³⁶ Doc. CL-268, *Magyar Farming*, paras. 347 and 350.

403. Improper deprivation of an acquired right can thus result in international delinquency by the host State, normally taking the form of an unlawful expropriation. In other cases, however, the measures adopted by the host State will not deprive the investor of the acquired right, but will simply result in an impairment of its use and enjoyment. In these cases, the measures adopted by the State can give rise to a breach of the FET standard⁴³⁷.

3.3 DECISION OF THE TRIBUNAL

404. Claimants argue that the 2007 Master Permit created an acquired right to install and operate Terminals in certain gaming centers, and that the Czech Republic impaired this right, thus breaching the FET standard⁴³⁸. The Czech Republic, in turn, avers that Claimants have failed to establish that they held any acquired rights and that these alleged rights have been impaired⁴³⁹.

405. The Tribunal partially sides with both Parties but will eventually dismiss the claim.

406. The Tribunal must first establish whether Claimants had any acquired rights under municipal law (A.) and whether such rights were impaired by the Czech Republic (B.).

A. The existence of acquired rights

407. The Tribunal agrees with Respondent that the existence of acquired rights is governed by municipal law, and that an acquired right only arises if a specific, irrevocable title of acquisition is issued in favor of the beneficiary⁴⁴⁰. The question is whether Synot TIP's 2007 Master Permit meets these requirements.

408. ██████████ the Respondent's legal expert, explains that under Czech law "permits may give rise to acquired rights" and that such rights "have a scope defined by [...] those permits"⁴⁴¹. To establish whether the 2007 Master Permit created an acquired right in favor of Synot TIP, it is thus necessary to review the wording of the Permit.

409. In the relevant parts, the 2007 Master Permit reads as follows:

"The Ministry of Finance, [...] on the basis of compliance [...] by SYNOT LOTTO, a.s. [...] (hereinafter the "Operator")

[...]

hereby permits

⁴³⁷ Doc. CL-293, *Mobil*, para. 987: "By imposing Export Withholdings, the GOA abrogated the Claimants' rights, which frustrated the Claimant's legitimate expectations. Therefore, the Tribunal concludes that this measure amounts to an objective breach of the fair and equitable treatment standard due under the Treaty. The Tribunal thus holds that the standard established in Article II(2)(a) of the Treaty has not been observed and that to the extent that its results in a detriment to the Claimants' rights it will as such give rise to compensation".

⁴³⁸ C II, para. 410.

⁴³⁹ R II, para. 456.

⁴⁴⁰ R II, para. 446.

⁴⁴¹ ██████████ ER III, para. 160.

the Operator to operate a lottery or similar game pursuant to the provisions of Section 50(3) of the Act via functionally indivisible technical device – Central Lottery System under the business name “INTERACTIVE LOTTERY SYSTEM” which system is an electronic system consisting of the central control unit (hereinafter the “CU”), local control units (hereinafter the “LU”) and connected interactive video-lottery terminals (hereinafter the “IVTs”), [...] solely within the territory of the Czech Republic

[...]

6. The IVTs [*i.e.*, *Terminals*] with the identification numbers specified below shall be operated and located in the following Gaming Centres:

[There follows a list with 465 addresses and identification numbers]

30. This permit is valid until 31 December 2017. No later than 2 months prior to the expiration of the validity hereof, the operator may apply to the Ministry of Finance for extension of the validity of the permit [...].”

[Bold in the original]

410. The 2007 Master Permit was issued by the Ministry of Finance, the body entitled under Section 50(3) of the Lotteries Act to issue authorizations of this type – it is an administrative act, properly issued by the competent authority within the Czech public administration. In accordance with its very wording, the 2007 Master Permit does create specific rights in favor of the named beneficiary: the entitlement to operate, within the territory of the Czech Republic, and for a period of 10 years (subject to possible extension), a certain electronic lottery system (consisting of a central unit, local control units, and interactive video terminals, all operated in accordance with an approved game plan) and to install 465 Terminals at specified gaming centers. After the issuance of the initial Master Permit, the Ministry of Finance on numerous occasions amended the authorization to include within its scope more than 4000 Location Permits, each authorizing the installation and operation of a Terminal in a certain gaming center.
411. The Tribunal thus finds that the 2007 Master Permit, as amended, constituted a valid title of acquisition, which, in accordance with Czech law, created acquired rights in favor of Claimants: the entitlement to operate, during a period of 10 years, an electronic lottery system and to install Terminals at certain defined locations.

Respondent’s counterargument

412. The Czech Republic submits that Claimants never held any acquired rights, because the permits expressly stated to be subject to amendment, change or cancellation under the terms and conditions stipulated in Section 43(1) of the Lotteries Act⁴⁴², and such a rule permits the revocation of permits by the enactment of subsequent legislation⁴⁴³.

⁴⁴² HT, Day 1, p. 155, ll. 13-19 (Professor Silva Romero). See also R-PHB, para. 46.

⁴⁴³ R II, para. 457.

413. Section 43(1) provides as follows:

“The body which licensed the lottery or similar game shall withdraw the permit if there occur or become known any circumstances for which it would not have been possible to license the lottery or similar game, or if it proves later that the data according to which the permit was issued are misleading”.

414. Respondent’s allegation is factually wrong.

415. It is true that the 2004 Master Permit, which had an indefinite duration and is irrelevant to the discussion of Respondent’s breach of Claimants’ acquired rights, did include a specific reference to Section 43 in general, not specifically to Section 43(1)⁴⁴⁴:

“The Ministry of Finance can amend, change or cancel the permit under the terms and conditions in Section 43 of the Act”.

[Section 43 of the Act includes seven sub-sections, which deal with various issues – withdrawal, cancellation, suspension, amendment, general requirements for the issuance of licenses].

416. But the 2007 Master Permit did not include any specific reference to the right of the Ministry of Finance to amend, change or cancel permits – whether under Section 43 or otherwise.

417. Respondent’s argument is not only factually wrong, but it is also unconvincing.

418. Contrary to Respondent’s submission, the existence of Section 43(1) does not deprive the 2007 Master Permit of its status as an acquired right; the reading of this provision now proposed by the Republic is contrary to the plain wording of Section 43(1), which only authorizes the withdrawal of a permit already issued in two clearly defined scenarios:

- if the operator had provided misleading data; or
- if circumstances supervene, which would have made the granting of the permit impossible.

419. Section 43(1) only encompasses improper conduct by the operator or supervening factual circumstances – not changes in regulation adopted by the Czech Republic. To understand otherwise would provide the Czech Republic with *carte blanche* to withdraw gaming permits, depriving the operator of its rights, by issuing, at its discretion, new laws or regulations. As ██████████ Claimants’ legal expert, has convincingly argued by drawing analogies with Section 101(c) of the Code of Administrative Procedure, the change in “circumstances” referred to in Section 43(1) cannot and does not include changes in law “as it [could] cause undesirable retroactivity of a legal norm”⁴⁴⁵.

⁴⁴⁴ Doc. C-7, p. 4.

⁴⁴⁵ ██████████ ER IV, para. 143.

B. The impairment of the acquired rights

420. Did the Czech Republic adopt measures that impaired Claimants' acquired rights?
421. The first step in the alleged impairment occurred in 2011, when the Constitutional Court passed its 2011 Decisions, declaring that municipalities were entitled to issue Decrees that restricted or prohibited the installation and operation of Terminals within the respective municipal boundaries⁴⁴⁶. In October of that year, the Czech Parliament promulgated the 2011 Amendment, which acknowledged the municipalities' right to issue restrictive Decrees, and the Ministry's obligation to withdraw conflicting Location Permits, but which included a provision – Section 51(4) – grandfathering Location Permits issued prior to 1 January 2012: these Permits would continue in force for three years and in the meantime would not be affected by Decrees issued by municipalities⁴⁴⁷.
422. The Tribunal considers that the period of three years offered by the 2011 Amendment was reasonable⁴⁴⁸, as it permitted operators to write off their investment in the Terminals and/or to adapt to the regulatory change, by moving Terminals from municipalities that had issued restrictive Decrees, to others with a more liberal regime⁴⁴⁹.
423. The three-year transitional period in the 2011 Amendment, alas, was not to survive an appeal to the Constitutional Court: in its 2013 Decision, the Constitutional Court, acting as a negative legislator, declared this provision in the 2011 Amendment unconstitutional and annulled it⁴⁵⁰. The result was that the transitional period was abolished: upon the enactment of a new Decree, which prohibited or restricted the installation of Terminals in the corresponding municipality, the Ministry of Finance was obliged to forthwith withdraw all Location Permits that conflicted with such a rule.
424. The withdrawal by the Ministry of Finance of certain Location Permits impaired Claimants' acquired rights: under the 2007 Master Permit (as amended) Synot TIP was entitled to install and to operate, during a period of 10 years, Terminals at defined gaming centers, located in certain municipalities. If any of the affected municipalities decided to issue a Decree, restricting or prohibiting the operation of Terminals, the Ministry of Finance was obliged to withdraw the offending Location Permit – without offering a reasonable transitional period or other form of compensation.

⁴⁴⁶ ██████ ER I, paras. 12 and 71.

⁴⁴⁷ Doc. C-28, Section 51(4).

⁴⁴⁸ *Cfr.* C-PHB, para. 40(d), footnote no. 205, citing *Vékony*, para. 34.

⁴⁴⁹ R-PHB, paras. 93-94, citing to HT, Day 2, p. 125, l. 22 – p. 126, l. 15 (██████); HT, Day 2, p. 125, ll. 11-15 (██████); HT, Day 3, p. 36, ll. 6-16 (██████); HT, Day 3, p. 37, ll. 7-10 (██████); and ██████ WS, para. 19.

⁴⁵⁰ Doc. C-30.

Respondent's counterargument

425. The Republic submits a counterargument: it says that, even if *de lege* the transitional period was abolished, Claimants *de facto* benefitted from a transitional period before the Ministry revoked the corresponding Location Permits⁴⁵¹.
426. The Tribunal concurs: although the Czech Republic, by not offering a reasonable transitional period or some other type of compensation, failed to properly protect Claimants' acquired rights, Claimants ended up enjoying a *de facto* three-year transitional regime, which afforded reasonable protection for such rights⁴⁵².
427. The proven facts support this conclusion: it was not until May 2013⁴⁵³ that Department 34 within the Ministry of Finance started the administrative process to cancel Location Permits in contravention of Decrees⁴⁵⁴. ██████████, a civil servant of Department 34 in charge of the administrative process, has testified that initially the entire process took between one year and a half and two years, which was reduced to one year as civil servants gained familiarity with it by 2015⁴⁵⁵.
428. During the entire administrative process and the subsequent appeal, the Location Permits remained in force and Terminals could still be operated⁴⁵⁶.
429. Synot TIP thus benefited from a *de facto* transitional period of at least three years – a period which the Tribunal has considered reasonable⁴⁵⁷:
- About two years between the 2011 Amendment and the Ministry of Finance's first actions to cancel Location Permits in 2013; and
 - Between one and a half and two years thereafter⁴⁵⁸, during which Department 34 completed the termination processes and the Ministry of Finance issued decisions on the appeals – Synot TIP being able to operate Terminals throughout that entire period.

* * *

430. Summing up, even though the Czech legal system lacked regulation properly protecting Claimants' acquired rights, the Czech Republic's *de facto* conduct avoided any negative consequence for the investor: Claimants enjoyed a transitional

⁴⁵¹ R II para. 464.

⁴⁵² The reasonability of a three-year period is confirmed by ██████████ Respondent's regulatory expert, who testified that WSMs are written off within the first year of operation; see HT, Day 6, p. 129, l. 19 – p. 130, l. 7 (██████████). "Don't forget what you're dealing with here: gambling machines, slot machines. They are so profitable, and the manufacturer will often finance it for you. Your return on investment, these machines will have paid for themselves, well have paid for themselves in the first year, and you're allowed to keep the machines [...]" [Emphasis added].

⁴⁵³ ██████████ WS I, para. 50. See also ██████████ WS, para. 22.

⁴⁵⁴ ██████████ WS, paras. 17-19. See also R II, para. 234.

⁴⁵⁵ ██████████ WS, paras. 21-23; and HT, Day 3, p. 93, ll. 12-14 (██████████).

⁴⁵⁶ ██████████ WS, para. 21; and HT, Day 3, p. 99, l. 21 – p. 100, l. 12 (██████████). See also R II, para. 236.

⁴⁵⁷ See *supra* footnote 452.

⁴⁵⁸ This was later reduced to one year by 2015, but the resulting extension amounted to the same time. See ██████████ WS, para. 21.

period that afforded reasonable protection for their acquired rights. This conclusion leads to the dismissal of the Claimants' claim⁴⁵⁹.

VII.2. FULL PROTECTION AND SECURITY

1. CLAIMANTS' POSITION

431. Claimants argue that Respondent breached its obligation to accord their investment full protection and security [previously defined as "FPS"]. Claimants submit that the obligation to accord FPS requires a host State to take necessary measures in order to protect the legal and physical security of the investments⁴⁶⁰. According to Claimants, liability for failure to accord FPS is strict⁴⁶¹.
432. Claimants maintain that, as a result of the 2011 and 2013 Decisions and attendant amendments to the Lotteries Act, there are no clear criteria allowing operators to assess a potential termination of their permits by municipalities⁴⁶². There has been a systemic failure by municipalities to issue Decrees in accordance with objective, non-discriminatory, and pre-announced criteria⁴⁶³. Therefore, due to the resulting lack of legal security, it is very difficult for operators to anticipate how their permits will be treated⁴⁶⁴.
433. Claimants reject the Respondent's view that the obligation to accord FPS only arises when there is a threat of permanent impairment to physical integrity of the investment⁴⁶⁵. According to Claimants, the Respondent's stance reflects a minority view, and most cases see the FPS standard as extending to legal protection and legal security⁴⁶⁶.

⁴⁵⁹ Arbitrator Alexandrov believes that, in the circumstances of this case, a transitional period would be an adequate remedy only if it resulted in offsetting the losses of the investor. In such a scenario, by granting a transitional period, the government would essentially compensate the investor for the harm caused by the challenged measures. Here, however, there is no evidence that the transitional period resulting from Respondent's *de facto* conduct offset Claimants' losses. While there is evidence of Claimants' efforts to mitigate damages, as is their duty, this does not mean that Claimants were able to recover all of their losses caused by the challenged measures or that they did not incur additional costs in the process of mitigation. Thus, the conclusion that the transitional period was sufficient or reasonable, *i.e.*, that it did offset Claimants' losses, cannot be reached without further inquiry.

⁴⁶⁰ C I, para. 349; and C II, para. 519.

⁴⁶¹ C I, para. 349.

⁴⁶² C I, para. 350; and C II, para. 521.

⁴⁶³ C II, para. 521.

⁴⁶⁴ C I, para. 350; and C II, para. 522.

⁴⁶⁵ C II, para. 520.

⁴⁶⁶ C II, para. 520, *citing* p. 579: A. Reinisch and C. Schreuer, *International Protection of Investments: The Substantive Standards* (2020).

2. RESPONDENT'S POSITION

434. Respondent submits that the 2011 and 2013 Decisions and attendant measures were consistent with the FPS standard. According to Respondent, an omission to take a measure of protection is contrary to the FPS standard when, cumulatively:
- “There is a threat of permanent impairment of [the] physical integrity of the investment⁴⁶⁷;
 - The potential measure to prevent permanent impairment is lawful⁴⁶⁸; and
 - The potential measure is reasonable under the circumstances⁴⁶⁹”.
435. Respondent contends that in the present case, there has been no threat to Claimants’ investment⁴⁷⁰. Respondent submits that even assuming *arguendo* that such a threat had materialized, Claimants have failed to establish what legal measures were available to Respondent to counter such a threat⁴⁷¹.
436. Respondent rejects Claimants’ allegation that most investment cases extend the FPS standard to legal protection and legal security⁴⁷².

3. DISCUSSION

437. Claimants consider that the FPS standard extends to legal protection and legal security and that the Czech Republic has breached this standard by making it difficult to anticipate how municipalities and the Ministry of Finance will treat Location Permits. Claimants also contend that there has been a systemic failure by municipalities to issue Decrees in accordance with objective, non-discriminatory and pre-announced criteria⁴⁷³.
438. Conversely, the Czech Republic argues that the FPS standard is misconstrued by Claimants, for it only protects the physical integrity of an investment against interference by the use of force. In any event, Respondent avers that the Constitutional Court’s 2011 and 2013 Decisions and attendant actions were consistent with the FPS standard⁴⁷⁴.
439. The Tribunal sides with Respondent.
440. Art. 2(2) of the BIT establishes⁴⁷⁵:

“Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party”.

⁴⁶⁷ R I, para. 567.

⁴⁶⁸ R I, para. 567.

⁴⁶⁹ R I, para. 567.

⁴⁷⁰ R I, para. 568.

⁴⁷¹ R I, para. 568.

⁴⁷² R II, paras. 535-536.

⁴⁷³ C II, para. 521.

⁴⁷⁴ R II, paras. 533-537.

⁴⁷⁵ Doc. C-5, Art. 2(2).

[Emphasis added]

441. There is no evidence that the Czech Republic has denied Claimants' investment full protection and security.
442. Claimants substantiate their FPS claim relying on the same arguments used in the FET claim for arbitrariness or unreasonable decisions by organs of the Czech Republic (see discussion under Section VII.1.1 *supra*). As the Tribunal has already found that the issuance of Decrees is regulated in a manner that does not seem arbitrary or discriminatory, this FPS claim must also be dismissed:
- The Municipalities Act, the Lotteries Act (the Gambling Act as of 2017), the Constitutional Court case-law, the guidelines established by the Ministry of Internal Affairs and the Office for the Protection of Competition delineate a clear framework by which municipalities must abide when enacting Decrees regulating gambling; contrary to what Claimants say, the issuance of Decrees is subject to prior guidelines and regulations that ensure that their adoption is reasonable and predictable⁴⁷⁶.
 - The Ministry of Internal Affairs reviews the compliance with the law of Decrees, before their entering into force; the Office for the Protection of Competition also investigates Decrees to assess whether they represent any violation of competition law⁴⁷⁷. In light of these *ex ante* and *ex post* procedures and oversight mechanisms, the Tribunal is not persuaded that municipalities have systemically failed to issue Decrees in accordance with objective, non-discriminatory and pre-announced criteria.
443. Having come to this conclusion, it is unnecessary that the Tribunal decide whether the FPS clause in the Treaty affords legal protection and legal security to the investment, or if it exclusively protects the physical integrity of an investment against interference by use of force.

⁴⁷⁶ R II, paras. 256-258.

⁴⁷⁷ R II, paras. 260-269.

VIII. COSTS

444. In this section of the Final Award, the Tribunal will establish and allocate the costs of this arbitration [**“Costs of Arbitration”**]. The Tribunal will first determine the applicable rules (1.). Next, the Tribunal will analyze each category of Costs of Arbitration: the fees and expenses of the arbitrators and the PCA (2.) and the fees and expenses incurred by the Parties for their defense in the arbitration (3.). The Tribunal will then briefly summarize the Parties’ respective cost claims (4.) and will finally make its decision (5.).

1. APPLICABLE RULES

445. Arts. 38 to 40 of the UNCITRAL Rules govern the determination and allocation of costs.

446. Art. 38 of the UNCITRAL Rules provides the general rule that:

“The arbitral tribunal shall fix the costs of arbitration in its award”.

447. Art. 38 of the UNCITRAL Rules specifies that the notion of costs of arbitration covers the following expenses:

“(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;

(b) The travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague”.

448. In view of the above, the Costs of Arbitration include:

- The fees and expenses of the arbitrators and the PCA's administrative fees and expenses [the **“Administrative Costs”**]; and
- The reasonable expenses incurred by the Parties for their defense in the arbitration [the **“Legal Costs”**].

2. ADMINISTRATIVE COSTS

449. Art. 39.1 of the UNCITRAL Rules establishes:

“The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case”.

450. Pursuant to the TofA, the fees of the members of the Tribunal shall be determined at a daily rate (or *pro rata*) in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees are incurred⁴⁷⁸. In addition, the members of the Tribunal shall be reimbursed for all reasonable expenses incurred in connection with this arbitration⁴⁷⁹.
451. Furthermore, the TofA provides that the work performed by the PCA shall be billed in accordance with the PCA’s schedule of fees and that the PCA’s fees and expenses shall be paid in the same manner as the Tribunal’s fees and expenses⁴⁸⁰.
452. The fees and expenses of the Tribunal are as follows:

	Fees (USD)	Expenses (USD)
Stanimir Alexandrov	205,550.00	43,930.27
Marcelo Kohen	184,837.50	8,678.78
Mark Clodfelter	140,775.00	20,175.57
Juan Fernández-Armesto	469,907.68	18,117.77
Total	1,001,070.18	90,902.39

453. Finally, the fees and expenses of the PCA, as well as the other expenses of the arbitration (including expenses related to the Hearings, including stenographer’s fees, as well as printing, telecommunications, bank and courier charges, among others), are as follows:

	Fees (USD)	Expenses (USD)
PCA	108,606.89	9,451.10
Assistant to the Tribunal	66,720.00	9,139.77
Miscellaneous expenses	-	142,658.63
Total	175,326.89	161,249.50

454. Summing up, the fees and expenses of the members of the Tribunal, the fees and expenses of the PCA, as well as other expenses of the arbitration, pursuant to Art. 38 (a) to (c) and (f) of the UNCITRAL Rules amount to USD 1,428,548.96.
455. In accordance with the provisions of the TofA, the Parties made several deposits amounting to USD 1,600,000 (USD 800,000 each Party). These amounts were paid equally between the Parties, in accordance with Art. 41 of the UNCITRAL Rules (*i.e.*, USD 800,000 from Claimants and USD 800,000 from Respondent). Therefore, all Administrative Costs are covered by the deposits made by the Parties and any unspent balance will be returned to the Parties by the PCA in halves following the issuance of this Award.

⁴⁷⁸ TofA, paras. 40-41.

⁴⁷⁹ TofA, para. 42.

⁴⁸⁰ TofA, para. 15.

3. THE PARTIES' LEGAL COSTS

456. On 20 January 2023, the Parties submitted their Statements of Costs [previously defined the Claimants' submission on costs as "C-SC" and Respondent's as "R-SC I and R-SC II"].

457. Claimants presented the following breakdown of their legal costs:

Counsel fees and disbursements ⁴⁸¹	EUR 9,034,045.31 GBP 3,886
Expert witnesses	EUR 471,833 GBP 568,241
Total	EUR 9,505,878.31 GBP 572,126.50

458. In turn, the Czech Republic declared the following breakdown of their legal costs:

Counsel fees and disbursements	EUR 3,180,815 CZK 920,704
Expert witnesses	EUR 303,019
Total	EUR 3,483,834 CZK 920,704

4. THE PARTIES' COSTS CLAIMS

459. Claimants request compensation for all the costs and expenses of the arbitration, including the fees and expenses of the Tribunal, the PCA, the fees and expenses relating to Claimants' legal representation and those of any experts appointed by Claimants or the Tribunal⁴⁸². Likewise, the Czech Republic asks that Claimants be ordered to bear all costs of the arbitration and the Czech Republic's legal fees and costs⁴⁸³.

460. The Tribunal will first summarize Claimants' cost claims⁴⁸⁴ (4.1.) and then do the same with those of Respondent⁴⁸⁵ (4.2).

4.1 CLAIMANTS' COST CLAIMS

461. Claimants submit that they have incurred EUR 9,505,878.31 and GBP 572,126.50 for fees and disbursements in this arbitration⁴⁸⁶.

462. First, based on Art. 42(1) of the 2010 UNCITRAL Rules, Claimants argue that, in allocating costs between the Parties, the prevailing principle is for costs to follow the event. Alternatively, they claim that the Tribunal may also apportion costs

⁴⁸¹ This figure includes the legal fees and disbursements incurred in preparation of DPS and in preparation of objections to DPS (Communication C-76).

⁴⁸² C I, para. 391(c); and Communication C-114.

⁴⁸³ R I, para. 632; R II, paras 577-578; and Communication R-101.

⁴⁸⁴ Communication C-114.

⁴⁸⁵ Communication R-103.

⁴⁸⁶ Communication C-114, p. 1.

between the Parties if it considers the apportionment reasonable, considering the circumstances of the case⁴⁸⁷.

463. Second, Claimants consider that in the present arbitration there have been a number of events in which they were the successful party, and that Respondent must bear the entirety of the related costs⁴⁸⁸:

- The Tribunal's rejection of the Respondent's application for a stay in this arbitration, in PO No. 3;
- The Tribunal's rejection of the Respondent's request for bifurcation in the Decision on Request for Bifurcation;
- The Tribunal's rejection of four of the Respondent's jurisdictional objections in the Interim Award on Jurisdiction; and
- The Tribunal's rejection of the Respondent's intra-EU jurisdictional objection, in the Second Interim Award on Intra-EU Objection.

464. Third, Claimants hold that, as for costs relating to the sole remaining jurisdictional objection and the merits, the Tribunal's allocation of costs must also take account of the costs resulting from Respondent's improperly tardy submission of five witness statements with its Rejoinder⁴⁸⁹. As such, Claimants consider that, irrespective of the Tribunal's disposition of issues, Respondent must bear the following costs⁴⁹⁰:

- The costs of Claimants' strike-out application; and
- The costs incurred by Claimants in preparing their additional factual and documentary evidence to address the five witnesses statements submitted by Respondent.

4.2 RESPONDENT'S COST CLAIMS

465. The Czech Republic submits that it has incurred EUR 3,483,834 and CZK 920,704 for fees and disbursements in this arbitration.

466. First, Respondent considers that under the 1976 UNCITRAL Rules⁴⁹¹:

- Legal costs are treated differently than arbitration costs; whereas arbitration costs follow the event subject to the Tribunal's relatively broad discretion, legal costs are subject to a reasonable apportionment by the Tribunal; and
- Only the legal costs of the successful party (and not the unsuccessful party) are recoverable.

⁴⁸⁷ Communication C-114, p. 2.

⁴⁸⁸ Communication C-114, p. 2.

⁴⁸⁹ Communication C-114, p. 3.

⁴⁹⁰ Communication C-114, p. 3.

⁴⁹¹ Communication R-103, p. 2.

467. Second, the Czech Republic submits that, were Claimants to prevail, they should still bear the entirety of the Respondent's costs, considering the efficiency of the Respondent's defense and the reasonable nature of their costs. Respondent also claims that, in any event, the gravity of the alleged breaches by the Czech Republic is low and that the single allegation of procedural misconduct by Claimants is misplaced⁴⁹².
468. Third, the Czech Republic opines that if Claimants prevail, each Party should be ordered to bear their own costs, as⁴⁹³:
- Claimants' costs are disproportionate and excessive;
 - Claimants were consistently unable to articulate a clear case; and
 - Claimants have needlessly drawn out the case for seven years, knowing that any award in their favor will be annulled given the present state of EU law on intra-EU BITs.

5. DECISION OF THE TRIBUNAL

469. The Arbitral Tribunal must now decide what portion of the Arbitration Costs is to be borne by each Party. In doing so, it shall be guided by the 1976 UNCITRAL Rules, as agreed by the Parties. Art. 40 of the UNICTRAL Rules stipulates:

“1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37”.

470. This provision gives the Tribunal broad discretion to allocate the costs of the arbitration between the Parties, the principal guideline being that the costs should be borne by the “unsuccessful party”. Otherwise, the provision directs the Tribunal to allocate these costs as well as legal costs as it deems “reasonable, taking into account the circumstances of the case”.

⁴⁹² Communication R-103, p.3.

⁴⁹³ Communication R-103, p.3.

471. The Tribunal considers that, *prima facie*, both Parties have been partially successful in this arbitration. Claimants have convinced the Tribunal that it has jurisdiction to adjudicate the dispute, and the Tribunal has rejected in its First, Second and Final Awards all jurisdictional objections submitted by the Czech Republic.
472. Respondent is also victorious: on the merits, the Tribunal has dismissed Claimants' claims for breach of the FET and the FPS standard; as regards the protection of acquired rights, the Tribunal found that Czech law did not properly protect Claimants' acquired rights; notwithstanding this finding, the Tribunal also concluded that, as a consequence of the *de facto* transitional regime, the Claimants were not exposed to the negative consequence deriving from the breach – leading the Tribunal to dismiss Claimants' claim for violation of their acquired rights.
473. All things considered, the Tribunal thus finds it reasonable under the circumstances that administrative costs be equally split between the Parties and that legal costs be borne by each Party in their respective totality.

IX. CONCLUSION

474. This arbitration has been divided into four phases:

- Jurisdictional Objections 3 to 6, which were dismissed by the Tribunal in its First Interim Award (1.);
- Intra-EU BIT Objection, which was dismissed by the Tribunal in its Second Interim Award (2.);
- Remaining Jurisdictional Objection and Liability, which has been dealt with in the present award (3.); and
- Quantum of damages (4.)

1. FIRST INTERIM AWARD: OBJECTIONS 3-6

475. In its First Interim Award, the Tribunal dismissed Objections 3 to 6 raised by the Czech Republic, concluding that:

- WCV's and CCL's permanent seats had been located in Cyprus since 2006, during the period when the alleged investment was performed, and consequently dismissed Respondent's Permanent Seat Objection⁴⁹⁴;
- Respondent failed to prove that any of the actions performed by Claimants in the 2014 reorganization were taken either in bad faith or constituted an abuse of rights, and thus dismissed the Bad Faith Objection⁴⁹⁵;
- Art. 8(2) of the BIT required that the same "dispute" be submitted to two fora; this had not happened in the present case, and thus dismissed Respondent's Fork-in-the-Road Objection⁴⁹⁶; and
- The dispute resolution clause contained in Art. 8(2) of the BIT was wide enough in scope to include Respondent's consent to a multi-party arbitration, and consequently dismissed the Multi-party Arbitration Objection⁴⁹⁷.

2. SECOND INTERIM AWARD: INTRA-EU BIT OBJECTION

476. The Tribunal also dismissed the Intra-EU BIT Objection in its Second Interim Award, as it found that:

⁴⁹⁴ See First Interim Award, para. 320.

⁴⁹⁵ See First Interim Award, para. 486.

⁴⁹⁶ See First Interim Award, para. 656.

⁴⁹⁷ See First Interim Award, para. 727 and 744.

- Consent, which was the basis of its jurisdiction, had been validly given by both Parties; this consent was not withdrawn at any stage by either of the Parties and remained valid, despite the developments in the EU arena⁴⁹⁸; and
- The dispute was arbitrable, and the Tribunal was not compelled to decline jurisdiction either due to reasons of comity or the potential issues with the enforceability of the award, thus exercising its mission to adjudicate on the dispute⁴⁹⁹.

3. FINAL AWARD

3.1 REMAINING JURISDICTIONAL OBJECTION

477. In the present award the Tribunal first dismissed the remaining jurisdictional objection brought by the Czech Republic⁵⁰⁰, and declared that it had jurisdiction over the dispute⁵⁰¹.

3.2 NO BREACH OF FET STANDARD

A. Regulatory changes in the Czech Gambling Sector

478. As regards FET, the Tribunal examined whether the regulatory changes in the Czech gambling sector, by themselves, constituted a breach of the FET standard enshrined in the BIT⁵⁰²:

- The Tribunal concluded that there were no major changes to the regulatory framework governing gambling in the Czech Republic; therefore, the Tribunal found that there was no failure by the Republic to act consistently and maintain a stable and transparent regulatory framework in breach of Art. 2 of the BIT⁵⁰³; and
- Additionally, there was no arbitrariness in breach of Art. 2 of the BIT⁵⁰⁴.

B. Legitimate expectations

479. The Tribunal analyzed whether the Czech Republic first gave rise to and then breached Claimants' legitimate expectations, in breach of the FET standard⁵⁰⁵.

480. The Tribunal concluded that there was no breach of legitimate expectations, as Claimant never had such expectations: the Czech Republic never made any representation to Claimants that they would be able to renew the 2007 Master Permit and that it would be renewed as it stood (*i.e.*, maintaining a certain number

⁴⁹⁸ See Second Interim Award, para. 494.

⁴⁹⁹ See Second Interim Award, para. 494.

⁵⁰⁰ See para. 192 *supra*.

⁵⁰¹ See para. 192 *supra*.

⁵⁰² See Section VII.1.1 *supra*.

⁵⁰³ See para. 294 *supra*.

⁵⁰⁴ See para. 304 *supra*.

⁵⁰⁵ See Section VII.1.2 *supra*.

of Location Permits, which authorized Terminals in specific places)⁵⁰⁶. In any event, Synot TIP has been able to renew its 2007 Master Permit and has recently been operating more than 800 Terminals in the Czech Republic⁵⁰⁷.

C. Acquired rights

481. The Tribunal had to decide whether the Czech Republic failed to grant an adequate transitional period for the cancellation of the Location Permits, and thus breached Claimants' acquired rights in violation of the FET standard⁵⁰⁸.
482. The Tribunal found *de lege* that the Czech regulation failed to properly protect Claimants' acquired rights. However, the Czech Republic's conduct avoided any negative consequence for the investor: Claimants *de facto* enjoyed a transitional period which afforded reasonable protection for their acquired rights⁵⁰⁹. This conclusion led the Tribunal to the dismissal of Claimants' claim⁵¹⁰.

3.3 NO BREACH OF FPS STANDARD

483. The Tribunal found that there was no evidence that the Czech Republic had denied Claimants' investment full protection and security⁵¹¹.
484. Claimants substantiated their FPS claim relying on the same arguments used in the FET claim for arbitrariness or unreasonable decisions by organs of the Czech Republic. As the Tribunal had already found that the issuance of Decrees was regulated in a manner that did not seem arbitrary or discriminatory, the claim for breach of FPS was also dismissed⁵¹².
485. In light of the previous argument, the Tribunal considered that it was unnecessary to decide whether the FPS clause in the Treaty afforded legal protection and legal security to the investment, or if it exclusively protected the physical integrity of an investment against interference by use of force⁵¹³.

4. NO NEED TO PROCEED TO THE QUANTUM STAGE

486. The Tribunal has rendered its Final Award, dismissing all claims submitted by Claimants and thus concluding the arbitration proceedings and rendering the quantum stage unnecessary.

⁵⁰⁶ See para. 368 *supra*.

⁵⁰⁷ See para. 368 *supra*.

⁵⁰⁸ See Section VII.1.3 *supra*.

⁵⁰⁹ This conclusion is subject to the views of Arbitrator Alexandrov stated in footnote 459 *supra*.

⁵¹⁰ See para. 430 *supra*.

⁵¹¹ See para. 441 *supra*.

⁵¹² See para. 442 *supra*.

⁵¹³ See para. 443 *supra*.

X. DECISION

487. For the reasons set forth above, the Tribunal decides as follows:

1. DISMISSES the remaining jurisdictional objection brought by the Czech Republic.
2. DECLARES that it has jurisdiction to adjudicate Claimants' claims against the Czech Republic and that such claims are admissible.
3. DISMISSES Claimants' claims⁵¹⁴.
4. DECLARES that each Party should bear 50% of the Administrative Costs and the totality of its own Legal Costs.
5. DISMISSES all other prayers for relief.
6. DECLARES the finalization of the arbitral procedure.

* * *

⁵¹⁴ Subject to the views of Arbitrator Alexandrov stated in footnote 459 *supra*.

Place of arbitration: The Hague, the Netherlands
Date: 26 July 2023

THE ARBITRAL TRIBUNAL



Stanimir A. Alexandrov
Arbitrator



Marcelo Kohen
Arbitrator



Juan Fernández-Armesto
President of the Arbitral
Tribunal