

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT ON
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN
THE KINGDOM OF THE NETHERLANDS AND
THE CZECH AND SLOVAK FEDERAL REPUBLIC, SIGNED ON APRIL 29, 1991
ENTERED INTO FORCE ON OCTOBER 1, 1992 (“AGREEMENT”)**

-and-

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES, 1976 (“UNCITRAL RULES”)**

ADMINISTERED BY THE PERMANENT COURT OF ARBITRATION (“PCA”)

PCA CASE NO. 2009-11

-between-

HICEE B.V.

(“Claimant”)

-and-

THE SLOVAK REPUBLIC

(“Respondent”)

SUPPLEMENTARY AND FINAL AWARD

17 October 2011

By the Tribunal:


Sir Franklin Berman KCMG QC
Judge Charles N. Brower
Judge Peter Tomka

1. By its Partial Award of 23 May 2011 (“the Partial Award”), the Tribunal determined that it had no jurisdiction over the dispute submitted to it and allocated the costs of the Arbitration up until that date.
2. Following the challenge initiated by the Claimant against one of its Members (“the challenge”), the Tribunal, by letter of 10 June 2011 (annexed), laid down the procedure to be followed (“the procedure”), in accordance with Article 8(5) of the Bilateral Investment Treaty and Article 11(3) of the UNCITRAL Arbitration Rules (1976).
3. By letter dated 19 September 2011 (annexed), the Arbitration Institute of the Stockholm Chamber of Commerce informed the Tribunal that no ground for disqualification had been found and the challenge had been dismissed.
4. By letter dated 19 September 2011, the Respondent requested from the Tribunal an award of its costs in defending the challenge. By letter dated 20 September 2011, the Claimant opposed the Respondent’s request and contested the Tribunal’s authority to award such costs.
5. On 21 September 2011, the Tribunal ordered the transmittal to the Parties of the Partial Award. On the same date, the Tribunal issued Procedural Order No. 3, indicating its intention to address the costs of the challenge by way of a Supplementary and Final Award and inviting the Respondent to submit, in the first instance, a detailed statement of the costs incurred by it in responding to the challenge, following which the Claimant would be given an opportunity to comment and to show cause why the Tribunal should not order it to meet such costs.
6. By letter dated 27 September 2011, the Respondent indicated that, in the light of the Tribunal’s decision on costs in its Partial Award, the Respondent no longer sought an award of costs incurred in defending the challenge.
7. Under Articles 38 and 40 of the UNCITRAL Rules the power to fix and apportion costs is reserved to the Tribunal, and this includes, in addition to the arbitrators’ fees, the fees, costs and other expenses of both the Permanent Court of Arbitration and the appointing authority.
8. The further fees, costs and other expenses incurred by the Members of the Tribunal and by the Permanent Court of Arbitration in the course of the challenge are assessed as follows:-

Sir Franklin Berman	€ 16,500.00
Judge Charles N. Brower	€ 12,800.00
Judge Peter Tomka	€ 30,500.00
Permanent Court of Arbitration	€ 6,625.00
Expenses	€ 382,26

9. The Tribunal can see no good reason why the fees, costs and other expenses detailed in paragraph 8 above should not be borne in full by the Claimant, as the unsuccessful Party in the challenge. Consequently, HICEE shall pay the amount of € 33,403.63 to the Slovak Republic. This shall be in addition to the costs and expenses allocated in the Partial Award.
10. In the light of paragraphs 4, 5 and 6 above, the Tribunal makes no further order as to costs.

Done at the place of arbitration, London, United Kingdom on 17 October 2011:


The Honorable Judge
Charles N. Brower


H.E. Judge Peter Tomka



Sir Franklin Berman KCMG QC
Presiding Arbitrator

ANNEX

Letter to the Parties dated 10 June 2011



Mr. Stanimir A. Alexandrov
 Mr. Daniel M. Price
 Ms. Marinn Carlson
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10 June 2011

RE: PCA CASE NO. 2009-11: HICEE B.V. V. THE SLOVAK REPUBLIC

Dear Mesdames,
 Dear Sirs,

I write on the President's instructions to inform you that the Members of the Tribunal are in receipt of the Claimant's letter of 7 June 2011 and its four exhibits.

The Tribunal, having regard to Article 8(5) of the Bilateral Investment Treaty and to Article 11(3) of the UNCITRAL Arbitration Rules (1976), has laid down the following procedure:-

- a) The Respondent is invited to submit any comments that it may have in respect of the Claimant's letter and the matters raised in it. The Tribunal lays down no fixed time limit but would appreciate receiving such comments by 20 June 2011.
- b) Following receipt of the Respondent's comments, or if the Respondent has no comments, an opportunity will be afforded Judge Tomka to make any observations he may wish or to provide any additional information that he may wish to bring to the Parties' attention. Once again, no fixed time limit is laid down given Judge Tomka's travel commitments on arbitral business in the month of June, but the Tribunal expects this stage to be completed by the end of the month.
- c) Depending on the outcome of the above, the Tribunal will at that stage afford the Claimant the opportunity to indicate whether, in light of the comments and observations received, it wishes to withdraw its challenge or maintain it.

Should any further procedural arrangements be necessary once the above procedure is completed, the Tribunal will make them at that point in consultation with the Parties.

The Tribunal takes this opportunity to recall that it has hitherto been operating on the understanding that, in accordance with the agreement between the Parties at the outset of these proceedings, every aspect of the proceedings should be treated as confidential and therefore not disclosable to any outside party. It will however, given the addressees of the Claimant's letter under reference, inform the Arbitration Institute of the Stockholm Chamber of Commerce in confidence of the above procedural arrangements.

Yours sincerely,



Dirk Pulkowski
Legal Counsel

cc: Sir Franklin Berman KCMG QC (by e-mail: fberman@essexcourt.net)
Judge Charles N. Brower (by e-mail: cbrower@20essexst.com)
H.E. Judge Peter Tomka (by e-mail: p.tomka@icj-cij.org)

ANNEX

**Letter from the Arbitration Institute of the
Stockholm Chamber of Commerce dated 19 September 2011**



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

NO. 4-SR

Received:

19 SEP 2011

Stockholm, 19 September 2011

HICEE B.V.

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Arbitration UNCITRAL (111/2011): HICEE B.V. / The Slovak Republic

HICEE B.V. has in a letter dated 25 July 2011 challenged H.E. Judge Peter Tomka.

HICEE B.V., The Slovak Republic and the arbitral tribunal have been given an opportunity to comment on the challenge. Comments have been submitted by HICEE B.V., The Slovak Republic and H.E. Judge Peter Tomka.

The President of the Arbitration Institute of the Chamber of Commerce of Stockholm has decided the following.

- (1) No ground for disqualification of H.E. Judge Peter Tomka has been found. The challenge has been dismissed.

Yours sincerely,

ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE


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