(Translation from the Czech language)

Took-over on 26 June 2002 *(initialled)*
(signature illegible)

Partial Arbitration Award

In the matter of the Claimant: **DIAG HUMAN a.s.**, with its registered office at Bechyně, Zámek 1, postal code 391 65, District of Tábor, Company ID 00408611, registered in the Companies Register kept at the Municipal Court in Prague, section B, File No. 50,
legally represented by JUDr. Jiří Oršula, attorney-at-law with his registered office at Popovova 10/1788, 143 00 Prague 4 - Modřany, the Czech Republic,

Against the Respondent: **The Czech Republic, The Ministry of Health,** Prague 2, Palackého nám. 4, ID 00024341
Legally represented by JUDr. Pavel Blažek, PhD., attorney-at-law with his registered office at Poštovská 8d, P.P. 196, 601 00 Brno

on payment of CZK 2,073,938,880.00, CZK 67,500,000 – rejected during the proceedings, the claim later on restricted to CZK 1,912,752,000 with interest pursuant to Section 53 and Section 757 of the Commercial Code for misuse of participation in the economic competition of claim pursuant to Section 42 of the Commercial Code and Section 18 of the Act No. 63/1991 Coll. On the protection of economic competition of claim in the wording of the Act no. 495/1992 Coll. and the Act No. 296/1993 Coll., and on grounds of unfair competition of claim pursuant to Section 42, Section 41, Section 44 and Section 50 of the Commercial Code.

The **arbitrators decided** in an arbitral tribunal consisting of JUDr. Josef Kunášek, Chairman of the arbitral tribunal, Prof. JUDr. Monika Pauknerová, CSc. and JUDr. Zdeněk Rusek, arbitrators, after hearings without presence of parties held on 19 March 2002, 8 April 2002, 7 June 2002, 18 June 2002 and 25 June 2002

with justice as follows:

1. **The Respondent is obliged to pay to the Claimant an amount of CZK 326,608,334 within five days of legal force of this partial arbitration award.**
2. **This arbitration award is partial; if an application for its revision be not filed within 30 days of its delivery (section V of the Arbitration Agreement from 18 Sept 1996), it shall have effect of a legitimate judiciary decision and**

shall be executable by law (Section 28 of the Act No. 216/1994 Coll., on the arbitral proceedings and on execution of arbitration awards).

3. **Other parts of the matter at issue including ancillary rights and interest accrued as well as costs of the proceedings shall be decided upon in a final arbitration award.**

Substantiation – legal grounds

I

On 21 Oct 1996 the Claimant delivered to the arbitrators its claim dated 15 Oct 1996 in the Claimant demanded that the arbitrators should pronounce an obligation of the Respondent to pay as compensation for damage a total sum of CZK 1,873,874,500 for reasons of misuse of participation in economic competition of claim pursuant to Section 42 of the Commercial Code and Section 18 of the Act No. 63/1991 Coll., on the protection of economic competition of claim in the wording of the Act No. 495/1992 Coll. And Act No. 296/1993 Coll. And for reasons of unfair competition of claim pursuant to Section 42, Section 41, Section 44 and Section 50 of the Commercial Code.

Firstly the arbitrators have found that an Arbitration Agreement was entered into by the litigants on 18 Sept 1996; that this agreement is valid and effective and that the claim for damages can be subject of arbitral proceedings. The parties agreed in the said agreement that proceedings shall be held in principle in writing, whereas an oral hearing shall be summoned by the arbitrators for any interrogations. The competence and jurisdiction of the arbitral tribunal to decide on this dispute arises from the said Arbitration Agreement; pursuant to the Arbitration Agreement, the arbitral tribunal was duly constituted to deal with the dispute.

After the Respondent made its opinion to the claim and both parties were given sufficient scope to specify their respective opinions in writing including adjustments of the statement of claim (in Czech *„petit"*) permitted by the arbitral tribunal at its session on 26 Feb 1997, the arbitrators have decided after hearings without presence of the parties on 19 March 1997 by means of an interim arbitration award; in its first statement /verdict/ they refuted the claim as to the amount of CZK 67,500,000; in its second statement they recognized the claims of the Claimant, namely for compensation for damage and an immaterial satisfaction in the form of a letter of apology as being justified *de jure* as to their reasons. The arbitrators invited both parties to negotiations on the amount of damage and to enter an agreement relating thereto and provided time limit for negotiations to the litigants.

Within the time limit, the Respondent attacked the interim arbitration award with a request for revision. A revision arbitration award from 27 May 1998 stated that the claim for damages is in its basis justified and that the objection of limitation is not

substantiated. The revision arbitration award also stated that the demand of the Claimant for an immaterial satisfaction in the form of a letter of apology is justified.

The Respondent then proposed to the Claimant another revision of both arbitration awards.

In an action filed to the Regional Companies Court in Prague, the Respondent demanded that the Arbitration Agreement should be declared null and void. This action was refuted by a decision of the said Court from 19 Jan 2000 ref. 5 Cm 191/99-56, which, after the Respondent filed an appeal, was then confirmed by a judgement of the High Court in Prague from 6 Dec 2000, ref. 3 Cmo 372/2000-91.

The Respondent also applied its claim for cancellation of both arbitration awards by a Court pursuant to Section 31 of the Act No. 216/1994 Coll., on arbitral proceedings and on execution of arbitration awards; however the Respondent withdrew the claim with reference to a resolution of the Government of the Czech Republic dated 10 Dec 2001 on the solution of dispute between parties by continuance of a suspended arbitral proceedings. The proceedings in this case at the Court was abated by a resolution of the Municipal Court in Prague from 4 Jan 2002, file No. 5 Cm 290/98-1 19, which came in legal force on 13 Feb 2002.

On 2 Jan 2002 the Respondent delivered to the Claimant the withdrawal of its proposal to review the revised arbitration award with reference to the cited resolution of the Government.

II

In its filings dated 17 Feb 2002 and 6 March 2002, delivered to the arbitrators on 6 March 2002 and 12 March 2002, respectively, the Respondent proposed that the proceedings should continue because the aforementioned procedural obstacles did not exist any more. The Claimant withdrew its filing submitted in the meantime (the filing from 7 April 2000 delivered to the arbitral tribunal on 15 May 2000), by which it withdrew its claim in the part relating to the material and immaterial satisfaction. It referred to the fact that a legitimate judgement had already been made on the legal base of the claim and proposed that a partial arbitration award should be issued, which would pronounce obligation of the Respondent to pay to the Claimant an amount of CZK 199,313,059 with punitive interest in an amount of 15,333 % p.a. from 1 Nov 1995 till full repayment and an amount of CZK 23,231,361 with punitive interest in an amount of 14,876 % p.a. from 12 Nov 1996 till full payment. The Claimant supported quantification of its claim with opinions of court experts Doc. Ing. J. Luňák, CSc. and Ing. R. Kochánek. It claimed that the Czech Republic following resolution of the Czech Government No. 1186/V dated 22 Nov 2000 established a working team consisting of representatives of IV1.F ČR, Konsolidační banka Prague and the Ministry of Health led by first deputy ministers of finance and health to establish the amount of claim for damage applied by the Claimant in the

dispute. This group, as alleged by the Claimant, authorised the appointed experts to elaborate an expert opinion. The authenticated copy of the opinion elaborated by experts thus appointed was submitted by the Claimant as evidence of its claim for compensation for damage.

The chairman of the arbitral tribunal called upon the legal representative of the Respondent on 15 March 2002 to express his opinion on the proposals of the Claimant.

On 19 March.2002 the arbitral tribunal adopted a resolution by which it ordered the legal representative of the Claimant to express his opinion on the following: whether the not renewed co-operation with Novo Nordisk was still due to the letter by the Minister of Health from 9 March 2002; how long has lasted the liability of the Respondent for the alleged lost profit of the Claimant; and how he can prove causal relationship between the offending act of the Respondent and the damage.

In its letter dated 25 March 2002 and delivered to the arbitral tribunal on 5 April 2002 the Respondent has said that they believe that an expert opinion or opinions should be elaborated for final decision, which opinions would quantify the damage allegedly caused to the Claimant. He claimed that the person authorised to act on behalf of the Ministry of Health had never ordered the opinion by Kochánek and Luňák, and that the results of the opinion are not based upon materials submitted by the Respondent. The opinion of the Respondent also contains an overt threat to the arbitrators, when saying that a criminal act is now seen in the manner in which the opinion was commissioned to be elaborated by the said experts, and that the whole matter is now, as far as the Respondent has been informed, the subject matter of investigation by bodies active in criminal proceedings. Should this opinion become evidence in the arbitral proceedings, such conduct would be seen illegal by the Respondent, also under the criminal law. The opinion further refers to the proceedings by which the damage was to be – in view of the Respondent – quantified. In view of the Respondent it would be proper, also with regard to the considerable amount of damages claimed by the Claimant, when the arbitral tribunal as well as the Claimant himself took into account the legal standing of the Respondent, who can only accede to the performance on the basis of an orderly elaborated and convincing expert opinion. The Respondent has ordered an expert opinion to determine the amount of damage. The legal representative pointed out in his filing that only such expert opinion would be the expert opinion ordered by the Respondent presented as evidence to the arbitral tribunal. The Respondent further referred to the fact that a withdrawal of part of the claim and a withdrawal of a proposal to correct typing errors submitted by the Claimant were not delivered to the Respondent.

At its session held on 8 April 2002 the Senate placed a duty on both parties to make an attempt, for reasons of procedural economy, to agree on the person of the expert within 7 days of delivery of the said resolution; failing such agreement, they should

communicate such fact promptly to the arbitral tribunal. In his opinion dated 17 June 2002 the legal representative of the Respondent claims that this resolution was delivered to him only with a letter by the chairman of the arbitral tribunal on 10 June 2002. The Claimant submitted to the arbitral tribunal on 26 April 2002 a voluminous opinion from 17 April 2002, which it delivered also to the legal representative of the Respondent. First, it explicitly withdrew the proposal to issue a resolution on correction of typing errors and the filing on withdrawal of the claim regarding material and immaterial satisfaction. The Claimant further claims to have entered into an agreement on appointment of court experts as early as on 9 April 2001, when the Claimant agreed in writing, that the Respondent chose doc. Ing. Luňák, CSc. and Ing. Kochánek to act at the experts to determine the amount of damage incurred to the Claimant. In its opinion, it was an orderly act of the Respondent made upon agreement of both parties, when it called upon these experts to elaborate the expert opinion. The Claimant also claims that on 25 Sept 2000 at a personal meeting of both parties regarding extra-judicial settlement held in the building of the Ministry of Health of the Czech Republic in presence of about six other persons the Minister of Health has declared that his first deputy minister MUDr. M. Pohanka, CSc., was authorised to act in the matter referring to the wording of the Act No. 219/2000 Coll. on the property of the Czech Republic and on its presentation in legal relationships, in the wording of subsequent regulations, under which Act the Ministry of Health of the Czech Republic is an organisational unit of the state and either the Minister of Health acts on behalf of the Czech Republic or a person authorised by him or a person empowered thereto by an internal regulation. In this opinion, the legal representative of the Claimant identified persons taking part in that meeting. The proposal of concrete persons of experts was submitted by MUDr. M. Pohanka, CSc. This proposal was amended by a proposal made by the representative of Konsolidační banka Prague s.p.ú /state monetary institute/. Further, three representatives of the Ministry of Finance and then head of the legal department at the Ministry of Health of the Czech Republic, JUDr. Vodová, were present. The legal representative of the Claimant further claims that the act of ordering an expert opinion by the Respondent is a binding act and argues with the opinion that performing evidence by such opinion would mean illegality including any criminal law liability. He brings evidence that the opinion was elaborated orderly, correctly and legally. He also refers to the fact that the Respondent did not propose any evidence supporting its allegations neither did it offer to prove its allegation. He again proposes (as he did in his filing dated 6 March 2002 delivered to the arbitral tribunal on 12 March) that a partial arbitration award should be issued, namely in accordance with this original filing. He also refers to the fact that the Respondent did not express its opinion to his proposal and hence did not refused it.

The legal representative of the Respondent attached documentary evidence to the opinion dated 17 April 2002 delivered on 26 April.2002. First, a letter by the Ministry of Health dated 7 Aug 2000 is attached, which letter is signed by the first deputy

minister MUDr. Michal Pohanka. The letter states that according to an economic expertise the annual profit in the Czech relevant market with plasma was 1 billion crowns a year between years 1992 to 1999, which totals to 8 billion crowns in the said period. Of this turnover, such proportion of the Claimant is to be determined that the Claimant would have on the relevant plasma market were it not for the breach of legal obligations by the Respondent; and within the framework of the contemplated settlement /conciliation/ a proportion of 10% per year is offered to the Claimant. The legal representative of the Claimant further submitted an official translation of a statement of Mr Soeren Bogoe Joergensen made on 19 April 2002, which says that he started working in the insulin laboratory of Novo Nordisk in 1978. The plasma unit was constantly seeking opportunities of using its capacity including fractionising on order. They were much alarmed by the letter from the Ministry of Health in March 1992, which was contradictory to the plans of Novo Nordisk. After receiving the letter, the plasma unit director, Mr Klaus Eldrup-Joergensen, asked for a meeting with the minister in Prague; this meeting, however, did not solve the situation. After that meeting it was decided that director Klaus Eldrup-Joergensen would write a letter to Conneco saying to suspend the agreement on fractionising. The letter explicitly stated the transient character of the suspension and possible renewal of co-operation as soon as the situation was settled. After the break in co-operation, the registration in the Czech Republic was preserved up to 2000 for the purpose of a new agreement with DIAG HUMAN a.s., former Conneco, should the situation change as regards the ministry. Mr Soeren Bogoe Joergensen further states that over the whole period from 1992 till 2000, when the production of the plasma unit was interrupted, he had never experienced any mistrust express by a member of the management towards DIAG HUMAN a.s, former Conneco, or towards its manner of doing business. The legal representative of the Claimant submitted as proof an official translation of the declaration of Mr Claus Bildsoe Astrup made on 19 April 2002. The witness was since 1995 marketing manager for the plasma production unit, since 1996 he was manager for sale and marketing for the plasma production unit, and since 1997 he was executive chairman/executive director. In 1998, the said witness acquired (together with further four colleagues) the production line within the framework of share buyout program; and at the time when he made that declaration, all of them were legal owners of all assets including know-how. However, the production facility was closed in May 2000. The witness learned about the co-operation with the Claimant from his colleagues; but he also found from correspondence, minutes and faxes that the co-operation was interrupted 1992 at the instance of the letter from the Ministry of Health of the Czech Republic. The witness has explained that reputation of co-operation partners is very important in the pharmaceutical industry. Up to 2000 (when the line was closed) they looked for opportunities of order fractionising and, hence, they stayed in touch with the Claimant in the Czech Republic. They hoped that in this way they would supply final products to the market or acquire plasma for fractionising of orders. According to the witness there is no doubt that it was the letter sent by the Ministry of Health of

the Czech republic that was the sole cause of interrupted co-operation with the Claimant and if the co-operation had not been impaired by that letter, they could have continue in their activity and their fractionising facility could have been in operation up to the present day.

Although the filing of the of the Claimant was delivered to the Respondent, it reacted on its filing by a filing dated 17 June 2002 only when invited to do so by the arbitral tribunal

The legal representative of the Claimant has submitted a written document designated as a "reaction on call of the chairman of the arbitral tribunal from 26 April 2002", dated 3 May 2002. In this document, he reacts to the said call of the chairman of the Senate by referring to the fact that co-operation with the Claimant was advantageous for Novo Nordisk also because supplies of raw material from the Respondent enabled that company to efficiently use the capacity of the production line; he concludes that were it not for the delinquent conduct of the Respondent, the said co-operation would continue. He further claims that the Respondent is liable for lost profit of the Claimant for the period from 1 July 1992, as it was in June 1992 when the Claimant last obtained from Novo Nordisk derivates from plasma the Claimant delivered for processing before 9 March 1992, i.e. before Novo Nordisk obtained the letter from the Ministry of Health, which letter is the cause of the dispute. As to the proof of causal connection between the damaging conduct and the rise of damage, the Claimant refers in particular to the already submitted evidence, i.e. declarations of the witnesses S.B. Joergensen and C.B. Astrup.

In a filing dated 7 June 2002 delivered on the same day to the arbitral tribunal and sent also to JUDr. Blažek, the legal representative of the Respondent, the Claimant proposed proceedings pursuant to provision of Section 118c) the Code of Civil Procedure The Claimant substantiated its proposal alleging that the Respondent was inactive; attached was the letter of the deputy prime minister of the Czech Government, JUDr. P. Rychetský, dated 30 Aug 2001, who stated obstructions made by the Respondent. The Claimant has again proposed (as it has done in its filing from 6 March 2002 delivered to the arbitral tribunal on 12 March.2002) that a partial arbitration award should be issued, namely identically with this original filing.

Although the filing of the Claimant was delivered by it to the Respondent, the Respondent again did not react, expressing its opinion only in a statement from 17 June 2002 made on call of the arbitral tribunal, when the arbitral tribunal at its session on 7 June 2002 adopted a resolution by which it obliged the representative of the Respondent to express his opinion within five fays to the filings of the Claimant dated 17 April 2002, 3 May 2002 and 7 June 2002. However, this deadline also lapsed in vain.

On 11 June 2002 the legal representative of the Respondent submitted a second expert opinion, which was ordered by him and which was that time elaborated by Ing. Vladimír Horský and Ing. Petr Svoboda, CSc. The order was ordered by the legal

representative of the Respondent. No agreement between the Respondent and the Claimant was made on persons of experts. This opinion values the damage of the Claimant for the period of 1993-2001 by an amount of CZK 358,100,000. The Respondent has submitted this opinion without any objections to its contents and to the valuation of damage, at the same time inviting the arbitral tribunal to perform evidence by this opinion as documentary evidence.

The legal representative of the Claimant submitted a „Proposal for issue of the partial arbitration award on account of the opinion submitted in May 2002 by the Respondent", which was dated 11 June 2002 and delivered to the arbitral tribunal on 17 June 2002. In this filing, the Claimant says that on 7 Dec 2001 after taking into account of comments by the minister of justice the Claimant and the minister of health for the Respondent have initialled a draft agreement with a title "Agreement on joint procedure in the dispute on damages". On 10 Dec 2001 the Czech Government approved this initialled draft and in its resolution no. 1337/V of the same day ordered the Minister of Health to conclude the initialled agreement (i.e. duly signed it). This happened on 17 Dec 2001 and – in accordance with Article 2 of the said agreement withdrew their filing, which were procedural obstacles in the continuation of the arbitral proceedings. The Claimant then refers to its proposals to issue a partial arbitration award by which it claimed damages in the form of lost profit for the period from 1 July 1992 till 31 Dec 1992. The Claimant further states that the opinion of experts Luňák and Kochánek from 3 May 2001 was ordered to these persons by the Respondent itself, whereas the Respondent now objects that such act was made by a person without competence to act on behalf of the Respondent. In this context, the Claimant claims that even in such case it is an opinion binding upon the Respondent, because neither the experts nor the Claimant could know about excess of power by the person, who ordered the opinion. The Claimant further refers to the submitted statements of witnesses, which in its opinion prove causal relationship of the damage with the illegal conduct and it also proves that were it not for the illegal conduct, the co-operation between the Claimant and Novo Nordisk could still exist. In its filing the Claimant also brings objections to the content of the opinion prepared by experts Ing. Mořský and Ing. Svoboda, which statement determines respective damage suffered in 1993 - 2001 inclusive. In view of the Respondent, the experts failed to say, e.g. in the key question of market share, whether they took into account who were the competitors on the relevantly existing market of the Claimant and why were they on that market in the period in question; why the market share of the Claimant according to their conclusions (views) should drop from alleged 40% in 1992 to 15% in 2001; and who of the competitors and as a result of what competitive edge they would occupy part of the relevant market after the market share of the Claimant dropped.

The Claimant in this filing withdrew its (repeated) proposal for issuance of a partial arbitration award, filing a new proposal in this context. The Claimant said that it sees purpose of issuing such award in the fact that there was absolute agreement between

the parties as to the length of causal connection between the damaging event and the damage (lost profit) and a partial agreement on the amount of the lost profit. In this connection, the Claimant believes that such partial arbitration award could have marks of a judgement of acknowledgement pursuant to Section 153a of the Code of Civil Procedure, would be substantiated by documentary evidence, which the litigants put to the files during the proceedings, and would also be in accordance to the principle of economy and speed (Section 100 of the Code of Civil Procedure). In this context, the Claimant also said that in its view the proposed arbitration award could be issued in summary proceedings, and that its issue would create conditions for both parties to extend their capabilities of agreement in the matter, and that its issuance would not limit the parties to use, in case that settlement should fail, all legal steps in the proceedings regarding remaining subject of the proceedings. The Claimant demands that the partial arbitration award should award an amount of CZK 358,100,000 including punitive interest starting on the day on which the Claimant first applied its claim for payment of the amount with the Respondent. The Claimant concludes that of the said amount of CZK 358,100,000 it already applied claim for payment of CZK 199,313,059 as early as on 13 Sept 1995, when it delivered to the Respondent a written call on payment damages in that amount,; the Claimant claimed the remaining portion, i.e. CZK 158,786,941 in an claim delivered to the arbitral tribunal on 21 Oct 1996 and to the Respondent on 11 Nov 1996. Therefore the Respondent has been in delay with payment of the second amount from 12 Nov 1996. For these reasons, the Claimant claims issuance of a partial arbitration award by which the Respondent would be obliged to pay to the Claimant an amount of CZK 199,313,059 including delay charge of 13.802% p.a. for the period from 11 Jan 1995 till payment and an amount of CZK 158,786,941 with delay charge of 13.538 % p.a. for the period from 12 Nov 1996 till payment.

At the same time, the Claimant proposes in this filing that the arbitral tribunal in its resolution should set a time limit of one month for negotiating reconciliation in matters as yet undecided in the subject matter of the arbitral proceedings and to submit the draft reconciliation to the arbitral tribunal. Should such time limit lapsed in vain, the Claimant proposes that the arbitral tribunal should invite the parties to deposit an advance for elaboration of a revision expert opinion, the author of which would be chosen by the arbitral tribunal, except that the parties submit within a time set in the resolution on conciliation a written agreement on an expert or expert institute that should prepare the expert opinion.

On 18 June 2002 the Respondent submitted its opinion (by legal representative of the Respondent, i.e. JUDr. Pavel Blažek) dated 17 June 2002. The Respondent states in particular that it sent the expert opinions (although only the opinion by experts Ing. Mořský and Ing. Svoboda was obviously meant) to the Claimant on 6 June 2002 and to other members of the arbitral tribunal on 13 June 2002. The Respondent further states that the resolution of the arbitral tribunal dated 8 April 2002 was only delivered to the legal representative of that party along with an instruction by the

chairman of the arbitral tribunal dated 10 June 2002. The Respondent does not agree that the resolutions or minutes from sessions of the arbitral tribunal should be sent by e-mail. In this filing, the Respondent states its opinion to the filing of the Claimant from 17 April 2002. The Respondent states to sections A) and B) (withdrawal of proposals) that the withdrawals were not delivered to it so that no relevant opinion can be made to them. As to section C) of the cited opinion of the Claimant, the Respondent persists in its opinion already communicated to the arbitral tribunal on the expert opinion of Kochánek and Luňák. In view of the Respondent, the opinion was commissioned in contradiction with provision of the Act No. 219/2000 Coll., which the Respondent corroborates by claiming that it has never submitted the opinion as evidence to the arbitral tribunal. The Respondent agrees with performing evidence proposed by the Claimant adding that in its view fulfils its procedural obligations, also stating that it does not agree with the lost profit criteria as proposed by the Claimant, but again refers to its allegations made in this context. The Respondent in its opinion also disagrees that a partial award should be issued, as in its view such decision would prevent any peaceful solution of the matter. It claims that the only way is in elaborating a new expert opinion pursuant to a decision of the arbitral tribunal. Finally, the Respondent in the section dealing with the filing of the Claimant form 3 May 2002 claims that a causal connection of the established delinquent conduct and the damage has never been proved and that such causal relationship is also not proved by statements of witnesses Astrup and Joergensen. The Respondent refers to the fact that the witness Astrup in his statement used the words "we could continue" and not "we would continue" /in Czech *„mohli jsme pokračovat*" and not *„pokračovali bychom*"/.

At its session held on 18 June 2002 the arbitral tribunal put the litigants under an obligation within 3 days of delivery of the resolution to submit their proposals (with alternatives) of an expert institute that should prepare a revision expert opinion and proposal of questions submitted to these experts.

The Claimant delivered its filing from 21 June 2002 on 24 June 2002 in which it proved that their filings from 6 March 2002, 7 June 2002 and 11 June 2002 were delivered to the Claimant *(translator's note: from the context this seems to be a typographic error and this party should eventually be the Respondent)* and submitted extract of the Claimant from the Companies Register as required by the arbitral tribunal. As to the expert institute proposed by the arbitral tribunal, the Claimant proposed that the arbitral tribunal should not commission preparation of a revision expert opinion, as it already has the opinion by Kochánek and Luňák, the opinion by Horský and Svoboda, an expert opinion prepared by MUDr. Rondiak (part of the first judgement) and an expert opinion prepared by M. Sušil, analyst of then Konsolidační banka (part of the second judgement). The Claimant further proposed that the arbitral tribunal should apply Section 136 of the Code of Civil Procedure, e.g in such way, that it would add results of both expert opinions and both expertises and divide this sum by four. For the event that the Senate would not want to decide in that manner, the

Claimant proposed two expert institutes and attached proposed questions for authors of the revision expert opinion. The Claimant has also declared that it is willing to attempt at coming to agreement with the Respondent as to definition of such documents for the preparation of the revision expert opinion which were handed over to the author of this opinion as being indisputable. The Claimant further says that the opinion by Horský and Svoboda expresses the minimum part of compensation for damage in the form of lost profit of the Claimant. Therefore, if an arbitration award is issued pursuant to this opinion would have a nature of partial judgement of acknowledgement. The Claimant insists on its proposal from 11 June 2002 that a partial arbitration award should be issued.

The Respondent delivered its filing from 24 June 2002 on 25 June 2002. It first asked that the time for filing proposal for an expert institute should be extended; it expressed its opinion that such institute should be appointed by the arbitral tribunal so as to avoid any suspicion of prejudice of an institute. At the same time it submitted proposed questions for the experts. It has further expressed its view on filings of the Claimant from 6 March and 7 June 2002 stating that it identifies with the view of the Claimant that these filings are not up to date any more. In its conclusion the Respondent has stated that it insists on its opinion that the expert opinion from May 2002 submitted by the legal representative of the Respondent does not provide sufficient base for any decision.

With this filing (including preceding filings) the Respondent expressed its opinion on all filings made by the Claimant, as can be seen from the survey of the filings.

III

Based upon the findings and after making evidence by documents submitted by the litigants, the arbitrators have arrived to the following conclusions:

1. First, they have stated that they can perform the evidence by the opinion of experts Kochánek and Luňák. According to Section 30 of the Act No. 216/1995 Coll. on arbitral proceedings and execution of awards (the Act on Arbitral proceedings) provisions of the civil the Code of Civil Procedure shall be reasonably used for proceedings before arbitrators. Pursuant to provision of Section 120 of the Code of Civil Procedure the parties are obliged to identify evidence to prove their allegations. The Court shall decide which of the proposed evidence will be made. Pursuant to provision of Section 125 the Code of Civil Procedure any means can serve as evidence by which facts of the case can be established, in particular interrogation of witnesses, expert opinion, reports and opinions made by bodies, natural and legal entities, notarial or executor's deeds and other instruments, interrogation of parties. If the manner of making evidence is not prescribed, it will be determined by the Court.

Unlawful nature of an expert opinion cannot be proved by the fact that the party, which commissioned such opinion, did not submit it as evidence. In this context, the Respondent only claims yet does not prove, nor offer any evidence to that allegation that the manner of ordering of the aforementioned expert opinion now leads to suspicion that a criminal act was committed, and that, according to the legal representative of the Respondent, that manner is now subject matter of investigation by bodies active in criminal proceedings. In this context, the Respondent did not even communicate information on the body investigating the matter or the reference under which the matter is registered at that body. The Claimant also failed to explain the contradiction in its statements that the person ordering the expert opinion was not authorised to order such expert opinion to be prepared. Moreover, the question who on behalf of the Respondent ordered the expert opinion is in its ultimate consequence irrelevant for the proceedings. It is essential that the opinion was prepared by experts agreed upon by the parties to the proceedings on 9 April 2001, which is without any doubt clear from the summarised minutes from the negotiations between the Ministry of Health of the Czech Republic and Diag Human, as, which were signed on behalf of the Ministry of Health of the Czech Republic on 8 June 2001 by head of the legal department, JUDr. Miroslava Yorlová. The Respondent has not stated any factual reservations regarding content of the expert opinion prepared by Doc. Ing. J. Luňák, CSc. and Ing. R Kochánek.

If pursuant to provision of Section 127 of the Code of Civil Procedure a decision depends on assessing a fact to which expert know-how is necessary, the Court shall appoint an expert after hearing the parties; the Court will hear the expert or can order him to prepare a written opinion; if an expert opinion ordered and submitted by one of the parties is only considered to be a documentary evidence, then it is necessary to state that the expert opinion by Doc. Ing. J. Luňák, CSc. and Ing. R. Kochánek is more trustworthy than the expert opinion by Ing. V Horský and Ing. P Svoboda, CSc, which was prepared without participation of the Claimant.

The opinion of experts Doc. Ing. J. Luňák, CSc. and Ing. R Kochánek was submitted to the arbitral tribunal as the evidence by the Claimant, which obtained the evidence legally, and hence this evidence was used (performed) in the proceedings. In the same way the expert opinion prepared by Ing. V. Mořský and Ing. P. Svoboda, CSc was used as evidence in the proceedings.

2. The arbitrators have further based upon the fact that it was made clear that the Respondent by not concluding corresponding agreement on the processing of blood plasma with the Claimant as winner of the tender announced and evaluated in 1990, but on the other hand sending a letter in 1992 to the vice president of the company co-operating with the Claimant, i.e. Novo Nordisk, in which it expressed its doubts on responsibility of the Claimant, has breached its legal obligations. In this context, legitimate decisions of the arbitral tribunal and the revision arbitral tribunal were issued that made clear also the question of causal relationship between the said breach of obligation on part of the Respondent and the damage on part of the

Claimant. This is now further corroborated by documentary evidence submitted by the Claimant, namely the statement of Mr Soeren Bogoe Joergensen from 19 April 2002 and Mr Claus Bildsoe Astrup from 19 April 2002. The arbitral tribunal has no doubts about these pieces of evidence submitted, as they are in accordance with evidence provided in the proceedings preceding the interim arbitration award dated 19 March 1997, in particular with the correspondence of the vice president of Novo Nordisk after a letter of the Respondent claiming unreliability of Conneco was delivered to him.

The arbitrators cannot identify with conclusions of the Respondent saying the statement of Mr Astrup uses the wording "could have been" and not "we would continue", which allegedly does not prove causal relationship between the damage and the tort. It is a reading out of context. It is because it unambiguously follows from statements of both witnesses, that Novo Nordisk was interested in co-operation with the Claimant, that it was ready for such co-operation and that it intended to go on with it at least till 2000. The only reason of breaking the said co-operation and that the co-operation was not renewed was the letter of the Respondent (the witnesses use the wording "a letter of the ministry and not "a letter by the minister", which unambiguously shows that they perceived the letter as a letter sent by a state body of the Czech Republic), which raised doubts on reliability of the Claimant; and Novo Nordisk was not interested and even could not co-operate with a company whose reputation was jeopardised. Even after removing its doubts, the Respondent did not remedy the state of affairs. This is an unquestionable proof of the causal connection between the illegal conduct of the Respondent and the rise of damage. But then, the Respondent had no doubts earlier in this context, as is evidenced by its letter from 7 August 2000 signed by the first deputy minister MUDr Michal Pohanka, delegated to co-ordinate conciliation negotiations, in which the Respondent offers (not without prejudice to any other dispute) reconciliation. In this context, it is also of some importance that the Respondent submitted to the arbitral tribunal also the second opinion on damage, which opinion was commissioned by itself, in which opinion the damage of the Claimant is valued for the period from 1993 till 2001 inclusive, whereas had no objections against the contents of this opinion and its correctness.

3. As far as the damage is concerned, its actual amount cannot be determined based on the evidence made as yet. As already stated before, the arbitral tribunal has two expert opinions on the amount of the damage.

The first one prepared by experts Doc. Ing. Luňák and Ing. Kochánek determines the damage of the Claimant for years 1992 to 2000 in a total amount of CZK 1,966,960,000. The second assessment prepared by experts Ing. Horský and Ing. Svoboda concludes that the damage for years 1993 to 2001 totals to CZK 358,100,000. This expert opinion was submitted to the arbitral tribunal by the Respondent suggesting using it as evidence.

Both expert opinions differ in their evaluation of the period during which the damage accrued. Arbitrators state that undoubtedly the commencement of damage rise was set at 1 July 1992, since the co-operation of the Claimant with Novo Nordisk existed till the end of June 1992. As to the question of time of causal connection of the tort and the damage, the arbitrators base upon the fact that the operation of the line for the derivatives processing was abated in May 2000. The discontinuation of the line operation is obviously the fact that breaks the causal chain. In order to find out whether the damage of the Claimant occurred also after the stoppage, it would be necessary to prove that the line operation would not have been discontinued should the co-operation had continued, or that the Claimant in that case had available a different partner for blood plasma processing.

4. The arbitrators also addressed the issue of whether or not the proposed publication of a partial arbitral award in a given stage of the proceedings is possible and practical.

Pursuant to Section 152(2) of the Code of Civil Procedure it has to be decided by a judgment on the case. But where appropriate, a court may firstly decide on parts or just only on merits thereof by its judgment.

The routes on the spot agree with the Claimant, as it cannot be overlooked that the dispute before the arbitrators commenced by a claim brought by the Claimant already six years ago, on 21 October 1996. Also an approach of the Respondent influenced the resulting delay in the proceedings as the Respondent, after ruling the interim arbitration award dated 19 March 1997 and the reviewed arbitration award dated 27 May 1998, has taken a number of legal steps described hereinabove aimed to reverse both awards, where it either was unsuccessful or withdrawn submitted proposals. This party commenced its extrajudicial negotiations with the Claimant only after the Government of the Czech Republic decided so. However, negotiation for an amicable solution was unsuccessful and when the two parties agreed to persons of experts and this expert opinion was prepared, the Respondent cast doubts thereon. This, however, disproportionately and unjustifiably extends the time when the Claimant receives the performance and, ultimately, time for which the Respondent will be obliged to settle also the default interest, if any. Both parties, however, have the right to have their case heard inter alia without unnecessary delays (Article 38, paragraph 2 of the Charter of Human Rights and Freedoms, concerning certainly also proceedings before the arbitrators, as is evident from the provisions of Article 36 paragraph 1 of the Charter of Human Rights and Freedoms).

Given the circumstances only an expert for preparation of the review expert opinion can be appointed in accordance with suggestion of the Respondent, subsequent to the resolution of the arbitral tribunal of 8 April 2002. Due to the already abrupt delays and because the accurate determination of the amount of damage will require additional time arbitrators consider as efficient, economical and fair to decide on part of alleged claim. By decision on part of claim filed the arbitrators pursue not only

efficient, expedient and economical proceedings in the case, but also the effect on the parties to seek an amicable solution of the claims of which has not yet been decided. I do not agree with the view of the Respondent that in particular the partial award may block the way to find an amicable solution, as this way can only by blocked by reluctance and obstruction of one of the parties.

However, we may not agree with the requirement of the Claimant to be awarded with CZK 358,100,000 with partial award according to the expert opinion of Ing. Horský and Ing. Svoboda. Although arbitrators consider as possible to believe the conclusions of the second expert opinion submitted by the Respondent, i.e. the expert opinion of hereinabove mentioned Ing. Horský and Ing. Svoboda, as it was ordered by the Respondent and submitted by it to the arbitral tribunal to the evidence without any objection as to its content and findings.

Given the doubts of arbitrators on issue till when the damage would arose as a result of the alleged infringement by the Respondent (i.e., whether such damage would arose until now, or to the closure of the production line for processing of blood plasma with the company Novo Nordisk), but we can now decide only on the partial claim, and on its part not only in its amount but also in terms of time, i.e., only on the claim from 1 July 1992 to May 2000, when the production line was closed. According to the cited expert opinion of sworn experts Ing. Horský and Ing. Svoboda, the profit of the Claimant expected for 2001 (i.e. already after closing the line) was CZK 19,300,000, and CZK 20,900,000 in 2000. Given that arbitrators have as proven causal link between the breach of duty by the Respondent and the damage arisen to the Claimant only for the period from 1 July 1992 to 30 May 2000, by a partial award they could not grant the Claimant its claim sought in the proposed amount. From the total amount of damage quantified by experts Ing. V. Horský and Ing. P. Svoboda, CSc, Svoboda, of CZK 358,100,000 a quantified profit for 2001 of CZK 19,300,000 was to be deducted. Because the line was closed in May 2000 but the expert opinion set the amount of lost profits for the full year 2000 in an amount of CZK 20.9 million, it was also necessary to deduct a proportion of profit quantified for this year, in particular for the period from June to December of 2000, i.e. the proportion corresponding to the seven months of the total damage quantified for the year in question (20,900,000 : 12) x 7), or CZK 12,191,666. After deduction of profit for 2001 and the proportion of the profit for 2000, the loss of the Respondent *(translator's note: from the context this seems to be a typographic error and this party should eventually be the Claimant)* as determined in the expert opinion of Ing. V. Horský and Ing. P. Svoboda, CSc. amounts to CZK 326,608,334.

Due to the above mentioned the arbitral tribunal considers the lost profit of the Respondent *(translator's note: from the context this seems to be a typographic error and this party should eventually be the Claimant)* quantified in the amount of CZK 326.608,334 as the minimal damage, which is undisputable. About this damage, as the damage minimal, decided the arbitrators by this partial award.

IV

1. It would be advisable also in the interest of both parties to try to reach an amicable settlement on the duration of a causal link between the infringement identified and the rise of damage, on the amount of damage and the amount of the default interest. For this purpose, i.e. to reach an amicable solution on the rest portions of the present case, the parties shall be provided a period of one month from receipt of this award. Then, at the request of the parties, the conciliation (settlement) concluded by them be confirmed by the arbitration award.

Should no agreement of the parties be reached on these issues, the proceedings will be resumed.

2. As now only on a portion of the claim sought is decided, arbitrators do not regard as advisable to be awarded on admission of claimed default interest already in this partial arbitration award. The statutory interest on arrears will be decided in the final arbitration award, as well as on the costs of proceedings.

3. By its claim the Claimant applied also its entitlement to both the material satisfaction and intangible satisfaction compensation. This claim withdrew by its filing dated 7 April 2000 and served to the arbitrators on 15 May 2000. Arbitrators, however, have not yet been able to decide on withdrawal of the proposal on intangible and tangible satisfaction, as due to error in the motion of the Claimant of 17 April 2002, received on 26 April 2002, it was not possible to clearly determine whether the withdrawal relates to the complaint (claim), or whether the Claimant withdraws already made withdrawal of the proposal. For this reason it has not been possible to invite the Respondent to express its statement under § 96(3) of the Code of Civil Procedure, in conjunction with § 30 of the Act on Arbitral Proceedings.

Therefore, the arbitrators decided as stated in the verdict of the arbitration award.

In Prague on 25 June 2002

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JUDr. Josef Kunášek
Chair of the Arbitral Tribunal

[signature illegible]
Prof. JUDr. Monika Pauknerová, PhD.
Arbitrator

[signature illegible]
JUDr. Zdeněk Rusek
Arbitrator