A

FINAL AWARD
issued in an ad hoc arbitration
in a dispute under case No. RSP 06/2003

plaintiff. DIAO HUMAN SE
based in Vadui, Vidia HcUigkrevr 6, 9493,
Liechtenstein

legally represented by Mgr. Jan Kalvoda, attorney based in

Llborova 405/14.169 00 Prague 6

against

defendant: Czech Republic - Ministry of Health,

baaed in Pati&cky asm. 4 118 01 Prague 2, ID: 024341

legally represented by Mgr. Jan Herds, acting on behalf of the

Office of Government Representation in Property Affairs
Regional Office in the City of Prague
Ralinovo n4bf. 42, 128 00 Prague 2

about Damages iu the amount of 5,770,780,060.10 CZK **and** interest cm delay until 30 June 2007 at CZK 7,487,684,791.01 CZK with other accessories
Tangible and noaflnandal compensation

Prof. Mgr. KvetosUv Rirricka, PbJ)„ presiding arbitrator, ProL Mgr. Monica PauknertvA, PhD., aod Mgr. Zdenek Ruiek, arbitrators,

have ruled as follows:

1. The defendant shall pay the plaintiff the amount of damages of 4,089,716,666.00 CZK, within one month from the entry Into force of the final arbitral award.

2. The claim for damages b the amount of 1,354,455,000.00 is dismissed

3. The claim for damages *in* the amount of 326 608 334.00 CZK proceedings is terminated.

4. The defendant is liable to pay compensation to the plaintiff with interest on die arrears for the period from 1 July 1992 to 30 June 2007 of 4,244,879,686.00 CZK, within one month from the entry into force of the final arbitral award.

5. The claim for arrears btcrest for the period from 1 July 1992 to 30 June 2007 in the amount of 3,242,805,105.00 CZK is dismissed.

6. The defendant shall pay the plaintiff interest on the amount of arrears of 1,287,877.00 CZK per day, starting on 1 July 2007 until payment, and the amount of

58,130,213.00 CZK from 14 July 2007 until payment, at the repo rate act by the Czech National Bank plus 7 percentage points on the basis tlial in each calendar half year, in which the debtor is in default, the arrears interest rate will be based on the repo rate let by the Czech National Bank valid for the fust calendar day of the half-year.

7. On the application that the defendant must send the plaintiff a registered letter, containing the text: "The Czech Republic - Ministry of Health apologizes for its unlawful conduct to the company Diag Human SE, which unduly and unreasonably compromised its reputation and excluded it from business. It regrets its unlawful conduct and the consequences of it.* the proceedings arc terminated.

8. As for the application that the defendant was required to publish at its own expense as an excuse text of section 7 this statement by at least a half page advertisement in the daily Mlada fnonta Dncs, Law, People newspaper and the newspaper and broadcasting time between 19.00 and 21.00 in the television broadcasting of Czech Television, TV Nova and Prima TV, live proceedings terminated.

9. On the application by the plaintiff that the defendant should be required to pay the plaintiff the financial compensation amount of 91,300,000.00 CZK, the proceedings are terminated.

10. The application by tlie plaintiff that the defendant should be required to pay the plaintiff actual damages in the amount of 21,000,000.00 CZK is dismissed.

II. Neither party has the right to compensation of costs, including lawyers' fees and remuneration paid to the arbitrators.

12. Experts from E & Valuations Ltd. based at Karlova rumesti 2097/10, 120 00 Prague 2, ID: 16190581, are granted payment for the costs of the expot's report and its annexes, amounting to CZK 1,590/\08.78.

13. The plaintiff and the defendant are required to pay the costs of experts for the expert's report which each amount of 795,254.39 CZK, which will be deducted from their deposit of CZK 1,200,000.00.

14. The expert is required within 15 days of the final legal authority of the award to return to each of the parties the advances of CZK 404,745.61.

The arbitral award is final and binding, both parties shall take note that the final effect BB of a judicial decision and in accordance with $ 28 para 2 of Act No. 216/1994 Coll. on arbitration and the enforcement of arbitral awards, as amended, and article III of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 May 1958 will be judicially enforceable, subject to the possibility of implementation of the arbitration clause contained in the arbitration agreement o f18 September 1996, such that the award will be reviewed by arbitration under $ 27 of the law. A request for reconsideration of the arbitral award may be submitted to the other party within 30 days from the date on which the requesting party receives the arbitral awad.

Grounds:

1. By an application of 15 October 1996, delivered to the presiding arbitrator on 21 October 1996, the plaintiff sought an interim issue of an award with the text "applicants demands for an apology, compensation for the damage to the commercial name and reputation of the plaintiff, actual damages suffered by tire plaintiff as well as damages for lost profits are reasonable and are not barred.".

It also applied for a partial award, according to which "the defendant shall, within ten days from the date of this decision, pay the plaintiff a) CZK 19,000,000.00 as actual damages, b) CZK 152,785,000.00 in compensation for loss of profit in the period from I April 1992 to 31.12.1992, c) CZK 67,500,000.00 as financial compensation for the damage to the plaintiff's commercial name and the issue of a letter to the plaintiff signed by the current Minister of Health*, whose text was drafted in the application.

And finally, it applied for a final arbitral award, according to which "the defendant shall, within ten days from the date of this decision, pay the plaintiff CZK 1,630,642,500.00 as compensation for loss of earnings for the period from 1.1.1993 to the date on which plaintiff will receive a written apology from the defendant as given in the ruling part of the award and the costs of the arbitration which gave rise to the final arbitral award.*.

The plaintiff submitted to the presiding arbitrator of 31 October 19% a new version of the application dated 15 October 1996, which stipulated that the partial payment of the arbitral award should be "a) CZK 67.500,000.00 as compensation for damage to the plaintiffs commercial name, b) CZK 91,300,000.00 as financial compensation, c) CZK 21,000,000.00 as actual damages, d) CZK 154,732,500.00 as compensation for loss of earnings for the period from April I 1992 to 31.12.1992, Le. CZK 334,532,500.00 in total and the delivery of the above-mentioned letter. In the final arbitral award the plaintiff claimed the cost of the arbitration which gave rise to the final arbitral award.

2. The defendant in the submission of 29 November 1996, notified to the arbitrators on 4 December 1996, proposed that the application be dismissed in its entirety.

3. The plaintiff submitted on 17 December 1996 an application amended in part in the arbitral award for the grant of the amount of 535,612,500.00 CZK in compensation fur loss of profits of 30% of the amount requested by the plaintiff and the final arbitral award granting the defendants residual damages in the amount of 1,429,563,000.00 CZK.

4. The plaintiff conducted a further adjustment in the submission of the application of 10 February 1997, which extended the action to CZK 2,073,938,880.00 with accessories and proposed the issue of an interim arbitral award, under which "the defendant is liable for the consequences of the letter signed on 9.3.1992 by then Minister of Health, MUDr. M. Bojar, CSc. and addressed to Novo Nordislt and the consequences of his meeting with the representatives of that company in the year 1992. In a causal connection with this letter and his conduct the plaintiff sustained a loss. Neither the plaintiffs claim against the defendant for compensation for that damage, nor its right to an apology and financial and nonfinancial compensation is barred.*.

Furthermore, the plaintiff sought the issue of two partial arbitral awards. The fust was to read "The defendant is required within IS days of this final part of the award to pay the plaintiff damages in the form of lost profit for the period from June 30, 1992 to December 31, 1996 in the amount of CZK 1.842,845,880.00 and from Jammy 1, 1997 until payment in the

amount of CZK 1,290,863.00 per day.*. The second was to read "The defendant is required to ensure that within ten days of the final arbitral award on tlie Tint page of the daily Mlada fronts Dnes an apology of the defendant to the plaintiff will be published* with the above content.

As the final arbitral award, it then proposed "The defendant shall, within fifteen days from the final part of the award, pay the plaxntilT CZK 6,500,000.00, as compensation for damage to the plaintiffs commercial name, CZK 91,300,000.00 as financial compensation, and CZK 21,000,000.00 as actual damages and alsu pay the amount of CZK 123,000.00 as remuneration to the plaintiff for the arbitration agreement provided by Ihe arbitrators."

3. By an interim award of 19 March 1997 the Arbitral Tribunal in the original composition decided as follows:

**/. The claim arising from the requested dantagts in the amount of CZK 67,500,000.00 for the damage to the plaintiff's commercial name* Is *rejected*

2. The claim for damages and nonfmancial redress - a letter of apology. In respect of the basis of a claim, unjustified The claim to financial compensation need not be decided

3. This is an interim arbitral award and unless the parties to ihe dispute agree otherwise, subject to review under Section V of the arbitration agreement between the parties dated 18.91996, If the request for review is submitted to the other Party within 50 days from the date on which the party seeking a review received the award. If the request for review is not served on the other parry, in that period the finding will have the effect of a final judicial decision (§ 28 of Act No. 216/1994 Coll).[m]

By a submission of 13 April 1997 the defendant requested a review of the interim arbitral award.

6. By a document dated 10 September 1997 the plaintiff brought an action for arrears interest of 18% per annum on the outstanding amount of the request for payment until payment, and appealed to the provisions of § 369, § 733 and § 502 of the Commercial Code. The defendant did not consent to the extension of the action. The Arbitral Tribunal in the former composition did not accept the application of the plaintiff to extend the scope of the action.

Given this fact, the application must be heard by the Arbitral Tribunal in the present composition. The arbitrators concluded that it was not possible to make changes to the action at this point since it would interfere with the plaintiffs right to judicial protection under Article 36 para I of the Charter of Fundamental Rights and Freedoms, and therefore on 13 June 2008 issued Resolution No. 61, which deferred the extension of the action as proposed by the plaintiff of 10 September 1997.

7. In a renew of the arbitral award of 27 May 1998 issued by the Arbitml Tribunal, composed of JUDr. Munkova thesis, the presiding arbitrator, Ir.g. Karen Otto, PhD., and Mgr. Bohuslav Pavlik, arbitrators, it was decided that:

"1. The claim for damages referred Io In the first sentence of paragraph 2 of the arbitral award Is based on the interim application dated October IS, 1996 to the arbitration tribunal being, as the basis for a claim, correct and fsrescriptton not being warranted

2. The claim to nonflnancial compensation - a letter of apology, referred Io in section 2 relied of the interlocutory application of the arbitral award of 15.10.1996 is *correct."*

8. The plaintiff by a submission of 7 Apnl 2000 withdrew the claim in the part which relates to financial and nonflnancial compensation and asked the tribunal to make such a partial withdrawal of the suit and bring the proceedings to a halt in this put. Given that the Arbitral Tribunal ruled on the application, the plaintiff by a submission of 29 May 2001 urged the Arbitral Tribunal to decide on the application. Even in the furtlier course of the proceedings the draft decision of the plaintiff was not accepted.

The plaintiff by submission of 17 April 2002 withdrew its application to withdraw the application for financial and nonfutancial compensation. Neither of the plaintiffs applications WCTC decided by the Arbitral Tribunal. The defendant has not commented any of the proposals made by the plaintiff.

The arbitrators based their decision on the applications for withdrawal of the plaintiffs claim of withdrawal and the withdrawal in June 2008 by the Constitutional Court. According to the precedent II.ÚS 1342-1307 the withdrawal of a claim (in this case part of the claim) is an irreversible act. According to the Constitutional Court ruling IV.ÚS 295/97 "when a party takes a procedural step where the law permits such a withdrawal, return, taking a withdrawal back, it is entitled to take the next act, and to return the proceedings to the original state." The arbitrators, therefore, could not decide otherwise, even if belatedly, rather than allowing tbe proposed withdrawal of the claim regarding compensation, and therefore Issued the proposal on 13 June 2008 Resolution Nr. 62 under which the plaintiff accepted the application of 7 April 2000 for a partial withdrawal of the claim for financial and nonflnancial compensation.

9. The plaintiffs by a submission of 17 February 2002 applied for the following partial arbitral award:

"L The defendant is required within five days of the final arbitral award to pay the plaintiffa) CZK 19,9313.039.00 with arrears interest at 15.333% per annum from 1.11.95 until payment b) CZK 23,231,361.00 with interest at 14.876% per annum from 12.1196 until payment

*U. The other parts of the settlement as well as management costs will be decided in the final arbitral award.**

By a document dated 17 April 2002 the plaintifTapplied for the following partial award:

L The defendant is required to pay the plaintiff within five days of the entry into effect of the arbitral award a) CZK 19,523,059.00 with arrears interest of IS 333% per annum from 1.11.95 until payment, b) CSK 23,231.361.00 with arrears interest at 14.876% per annum from 12.11.96 until payment.

11 The other parts of the subject of the proceedings and costs will be decided in the final arbitral award."

Dy a document dated 11 June 2002, the plaintiff applied for the following partial award:

"/. The defendant shall pay the plaintiff within five days of the final arbitral award in respect of damages a) CZK 199,313.05900 with arrears interest at 13.802% per annum from 1.11.95 and b) CZK 158.786,941 00, with arrears interest at 13.538% per annum from 12.11.96 until payment.

The other parts of the subject of the proceedings as well as the costs will be decided in the final arbitral award."

10. Dy a partial arbitral award issued on 25 June 2002 the Arbitral Tribunal in the former composition decided as follows:

•/. The defendant is liable to pay the plaintiff the amount of CZK 326,608,334.00 within five days of this part of the final award entering into effect.

2. The award Is partial, and provided that no application for review of It is made within 30 days of receipt (Section V arbitration agreement dated 18 9 1996) it will have the status of a final judicial decision and the enforceable in law (§ 28 ofAct No IMI 994 CoU. on arbitration and the enforcement of arbitral awards).

3. The further pans of this case including accessories, as well as the costs, will be decided In the final arbitral award"

11. The defendant by a submission of 23 July 2002 requested a review of the partial arbitral award.

By the review of the arbitral award of 16 December 2002 issued by the Arbitral Tribunal, composed of JUDr. Jindmka Munkova, the presiding arbitrator, lng. Ota Karen PhD. and Dr. Dohuslav Pavlik, the arbitrators, it was decided that:

The partial award dated 25.6.2002 in the dispute between the plaintiffs Diag Human, located at Bechyne, Zamek 1, PS 391 65, Tabor District, ID 00408611, registered in the Municipal Court in Prague, section B, entry 50, legally represented by JUDr. Jiri Orsula, attorney based at Popov /MI 788, Prague 4 - Modrany, against the defendant the Czech Republic, Ministry of Health, Prague 2, Palacky nam. 4. IC 00024341, legally represented by JUDr. Paul Blazek, PhD, attorney based at Poitovskd 8d PA 196, 601 00 Brno, for the aggregate amount of CZK 1,873.874,500.00, which found that the defendant Is liable to pay the plaintiff the amount of CZK 326,608.334 .00 and that another portion of the case including accessories, as well as the costs, will be decided In the final arbitral award, is confirmed"

12. By a submission of 17 April 2002 (entered in the file under the V2 and V3) Dr. Jiri Orsula informed the arbitrators that the plaintiff testified had assigned the full power of attorney in (he arbitration to him on the basis of the contractual claim and the plaintiff contends that by the issue of the second partial award "the defendant the Czech Republic is required, within five days after the part of the final award, to pay the second plaintiff', JUDr. Jiri Orsula CZK 77,775,550.00 and CZK 150,000.00 as a proportion of compensation paid for (he arbitration proceedings. And accordingly the CR should agree to pay CZK 77,775,550.00 under this third award. The arbitration proceedings in the part that relates to

the right of JUDr. Jiri Orsuia is suspended and continues only in the part that relates to the right of Drag Human, as*.

13. Due to the resignation of Dr. Joseph Kuniika from the position of presiding arbitrator, and given that the parties agreed on the person of the presiding arbitrator, the remaining two members of the Arbitral Tribunal on 27 April 2003 chose as presiding arbitrator Dr. Mgr. Kvetoslav Ruzicka, PhD.

The plaintiffs in the submission of 15 May 2003 (entered in the file under YL) indicated that they would not raise an objection to the elected presiding arbitrator. Attached to this submission the plaintiff is the original power of attorney for JUDr. Jan Kalvoda, attorney, of 24 March 2003.

The defendant in the submission of 21 May 2003 (entered in the file under S6) indicated that they agreed with the person of the presiding arbitrator, and raised no objection of bias against him.

Dr. Mgr. Kvctoslav Ruzicka, PhD., on the basis of the positive assessment by the parties of his role as the presiding arbitrator, accepted in writing his office on 25 May 2003 according to § 5 2 of Act No. 216/1994 Coll. on arbitration and the enforcement of arbitral awards, as amended (hereinafter only the "ZRR") (entered in the file under X4). This was supplemented by the Arbitral Tribunal, which further abbreviated the proceedings and ultimately issued the final arbitral award.

14. On 28 April 2003 (V4) Dr. Jiri Orsuia proposed a second interim arbitral award:

"L On 2.3.2001 Diag Human, Inc. concluded an agreement on assignment of claims with JUDr. Jiri Ursula, ID 540508V912 in respect of 30% of his award including accessories to the Czech Republic, whose legal basis was granted by an interim award of 19 March 1997 and the arbitral award on 27.3.1998. By this assignment, JUDr. Jiri Orsuia become a creditor of the assigned receivables

11 On 23.4.2003 Dr. Jiri Orsuia demonstrated the acquisition of the assets listed in point I: a) from the Czech Republic tn accordance with § 526 paragraph 1 of the Civil Code, as the person authorised to accept the payment of outstanding debts under part B) of the award of the arbitrators in accordance with § 2 5 of Act No. 216/1994 Coll. on arbitration and enforcement of arbitral awards, thus becoming a party to the arbitration as the second plaintiff."

15. The defendant in the submission of 6 May 2003 (SI and ST) indicated that it was in the interest of the Czech Republic that the Arbitral Tribunal should promptly resolve the case and take a final decision in the matter, since the current method of proceeding was considered to be unacceptable and detrimental to the substantive issue. The Czech Republic maintained the position that no competent public authority at the time had ever recognised the causal link between the alleged unlawful conduct of the State and the damage which the plaintiff claims.

The defendant proposed that the tribunal should deal with the legality of the proceedings, including the legality of the arbitration agreement and the conditions under which to take a decision on the merits

16. The defendant in the submission of 21 May 2003 (S3) addressed the presiding arbitrator with the proposal that the Atbitral Tribunal in the matter should immediately take action and consider the merits of the case. With this submission the defendant enclosed a certified power of attorney for Dr. Paul Blazck, Ph.D. of 2S April 2003.

17. The Arbitral Tribunal by Resolution No. 1 of 28 May 2003 ordered the parties to comment within the prescribed time limit an the claims and applications of Dr. Jiri Orsuia and to agree on an expert person (persons) to carry out an expert assessment. The plaintiffs were required to specify their application and the pending claims.

18. The plaintiffs in the submission of 29 May 2003 (Y3) communicated to the Arbitral Tribunal the outcome of the non-judicial dispute resolution in question. These negotiations, however, had been unilaterally terminated by the defendant Furthermore, the plaintiff commented on the non-judicial procedures of the defendant, which were of a dual nature: public statement of persons currently performing constitutional functions on the arbitration, and police procedures in direct connection with the arbitration, to the effect that these statements involved unexpected changes.

Finally, the plaintiff raised the objections of the defendant could not be a party to the arbitration proceedings and accordingly the lack of authority of the arbitrators. In its view, the defendant as a corporation under public law and legal entity b a civil party. In the legal relationship established by a civil tort It is a legal person and its legal personality is established by 5 18 paragraph 2 of the Civil Code, in connection with § 6 of Act No. 219/2000 ColL

19. The plaintiff in the submission of 15 June 2003 (Y8) commented on the procedure proposed by Dr. Jiri Ursula and told the arbitrators that it was proposing that Dr. Jiri Orsuia should be joined u a party to the proceedings in respect of the assigned alleged claims and in the context of this statement also noted that the legal reality alleged by Dr. Jiri Orsuia - that is, the assignment of port of the claim - had never occurred. According to the plaintiff the agreement for the assignment of the claims in Dr. Jiri Orsuia as representative had never been included.

20. The defendant in the submission of 13 June 2003 (S8) commented on the demands and applications of Dr. Jiri Orsuia and proposed that the Arbitral Tribunal should reject the application. In relation to the award of the Arbitral Tribunal on the agreement on an expert, the defendant argued that it never recognised the causal link between any unlawful conduct and any damages, and therefore again repealed its requests that the Arbitral Tribunal should examine these issues.

21. JUDr. Jiri Orsuia in a submission of 17 June 2003 (V8) delivered "An action - the main intervention unda ▮ 91a of the CPC - for the payment of 30% with accessaries in respect of the pending arbitration proceedings of Drag Human, Inc. - Czech Republic, Ministry of Heahh", which applied for a ruling that JUDr. Jiri Orsuia is a party to the alleged claim for 30% of the claim against the defendant, the Czech Republic, made by the plaintiff.

The plaintiff and the defendant were asked on 6 August 2003 by the presiding arbitrator (on and was this day the presiding arbitrator served the original of the submission of Dr. Jiri Orsuia of 17 June 2003) within a specified period to comment on the said submission.

22. The plaintiff in the submission of 30 June 2003 (Y9) recapitulated the amount of the claimed entitlement to compensation as follows:

a) in respect of the amount of CZK 199,313,095 00 from the application of September 13, 1995 addressed to the defendant with the deadline for payment of 30.10.1995;

b) in respect of the amount of CZK 1,873.874,500.00 from the application dated 15.10.1996, delivered to the Arbitral Tribunal on 2110.1996;

c) in respect of the amount of CZK 1,965,175,000.00 by the additional and corrective action which was brought before the Arbitral Tribunal on 30.10.1996, and 6,500,00000.00 CZK in compensation for damage to the commercial name, CZK 91.300,000 00 as financial compensation, CZK 21.000,000.00 as actual damages, and CZK 1785375000.W for lass of income for the period 1.4 to 31.12.1996;

d) In respect of the amount of CZK 2,073,938.880.00 the submission dated 10.2.1997 extended the claim; the interim award dated 19 March 1997 then rejected the claim of CZK 6,500,000.00.00 for damage to the plaintiffs commercial name because of the limitation period and in terms of compensation for loss of profits found from the beginning of the insured event to date July 1, 1995;

e) the plaintiff is also submitting a claim for compensation for loss of earnings, based on the amount of plasma produced in the CR market in subsequent years, from June 1, 1997 (already applied to pay damages for the lost profit calculation, which includes lost profits up to 5.1 1997) until May 30, 2000 (the end of a causal connection between the defendant's unlawful conduct and the damage) with accessories, amounting to CZK 330,000,000.00 per year.

Furthermore, the plaintiff made detailed comments on the expert opinion of the experts Dr. Ing. Lunaka and Mr., Kochunke and the proposal of the defendant in the appointment procedure for the expert for the review.

23. The defendant in the submission of 16 July 2003 (SI2) said that it remained of the opinion of the inapplicability of the expert opinion of Dr. Ing. Lunaka and Mr.. Kochanke both for legal reasons and for substantive and methodological reasons. The defendant again requested that the Arbitral Tribunal should review the procedural terms without delay.

24. The defendant's lawyer JUDr. Paul Dlazrk, Ph.D. by a submission of 21 July 2003 (SIL) told the Arbitral Tribunal that be was replacing the defendant's attorney for representation in this arbitration, while its appeal was received on 21 July 2003.

On 23 July 2003, Ihe Arbitral Tribunal received the submission of JUDr. Zdcnck Novaeek, attorney in Slapanic* at Brno, to the effect that on 13 July 2003 he was awarded by the defendant a power of attorney for representation in this aibitratian.

25. The defendant in the submission of 19 August 2003 (SI4) delivered an opinion on the application - the main intervention JUDr. Jiri Orsula. Given that the defendant was unaware of the terms of the assignment of claims, it could not comment on the claims of JUDr. Jiri Orsula. The defendant did not recognise any of the claims of JUDr. Jiri Orsula. It had previously expressed its opposition to his participation in this proceeding.

The defendant in a second submission of 19 August 2003 (SI5) filed an application for new proceedings. [(commented on the arbitral award in part and the review of the arbitral award and stated that the obligation imposed had been fulfilled, because it regarded the decision as enforceable, although it was not with consent. It also stated that the resolution did not meet the review of the Arbitral Tribunal of 15 November 2002 by which it was ordered to produce evidence in the case. Such evidence has not been offered because it was not available.

According to the statements of the defendant before the partial final arbitral award entered into effect, it was necessary to hear a witness, MLTDr. Petr Turek, who dirw up the notarial act and then gave the defendant the declaration which states the grounds of the new legal assessment. Previously, this evidence was not available to the defendant. For that reason, under $ 22$, paragraph I point. a) of the CPC the defendant proposed the issue of a resolution which authorised the proposed new proceedings.

26. The plaintiff in the submission of 21 August 2003 (Yl 1) delivered an opinion on the application - the main intervention, made by JUDr. Jiri Orsuia and stated that this submission does not meet the requirements of the action to the extent that it, if it was equivalent to an action within the meaning of § 90 of the OSR, the defects in submission would prevent continuation of the proceedings. The plaintiff expressed the view that Dr. Jiri Orsuia should be ordered within the meaning of $ 43 para I of CPC to supplement his submission, as wdl as to attach the documentary evidence which would be cited in the amended submission. Only then would it be possible, having regard to the abovemmtioned principle of procedure and the principle of equality of the parties, for the parties to be invited to comment on die substance, albeit taking into account the lack of the necessary competence of the arbitrators to decide on the submission of JUDr. Jiri Orsuia.

27. The plaintiff in the submission of 31 August 2003 (Y13) commented on the application of the defendant for new proceedings. It stated that it held the opinion that it was quite clear that the applicability of the provisions on new proceedings in the civil procedural code was excluded for arbitration proceedings. In The arbitration proceedings it is not possible to apply for new proceedings and because of the provisions of § 22$ of the Civil Procedure Code, given the special procedure ZRft associated with die application of these reasons, the right is granted to seek annulment of the award in the general court.

Furthermore, the plaintiff commented on the defendant's factual allegations, on which, from its submission, it is clear that the argument focuses on a dispute which is irrelevant to the current phase, which has already been decided on the basis of the claim made in an interim award. The assessment of a causal link was its subject. The defendant through the unusual uncertainty of its data has not discharged its procedural obligation and is preventing the plaintiff from adequately logging such a claim. On the novelty of the appointment of MUDr. Turek, the plaintiff claimed that the witness was employed throughout in the public health administration and is acting in the dispute as an expert and deeply engaged consultant.

The application for an inadmissible extraordinary appeal in the arbitration proceedings is regarded by the plaintiff as an attempt by the defendant to introduce delays in tine proceedings. The plaintiff also stated that with regard to Act No. 201/2002 Coll. on the Office for die Representation in Property Affairs, on 1 July 2002, the plaintifT has doubts about whether the defendant is properly represented in this arbitration.

28. JUDr. Jiri Orsula in a submission of 5 September 2003 (V9) said that is power of attorney with the plaintiff was terminated on 17 January 2003, after which he gave on behalf of the plaintiff consent in the succession procedure to a transfer of part of the claim. In his view, the procedural right of succession arose automatically when the Arbitral Tribunal announced the agreement and the assignment of the claims in question.

If the Arbitral Tnbunal were to find that it is a party to the arbitration proceedings, that part of the plaintifTs claim against the defendant would be the subject of an action In court, as agreed. This would cause an obstacle to the arbitration, which would have to be suspended pending the final court decision, in respect of the partial claim of the creditor.

The presiding arbitrator on 8 September 2003 requested the plaintiff and the defendant to appear within a given deadline to comment on the submission of JUDr. Jiri Orsula.

29. The arbitrators by Resolution 3 of 12 September 2003 decided that the new proceedings would be permitted. The previously issued arbitral awards (in this case an intermediate award, and a partial award and two reviews) could not be changed in any way other than by abolition through the general court The ZRft in any case does not permit resumption of the arbitration. The institution of new proceedings is only permitted under the ZRft as one of the reasons for the annulment of an arbitral award in § 31 point. g) ZRft, since the arbitral award can only be cancelled by the general court.

By resolution No. 4 of the same day the parties were given an additional period of 30 days to agree on the expert (exports) to conduct the expert review.

30. The plaintiff in the submission of 15 September 2003 (YI5) commented on Che submission of Dr. Jiri Orsula and stated that it did not accept his proposed entry into this arbitration. The procedural result in accordance with § 107a CPC could be associated with the application of a party, in effect exclusively the plaintiff The procedural step was the proposal of 16 January 2003 for the service of the arbitrators. The existence of an authorised representative for such an act should be considered to mean when the act is taken without an effective expression of will the act is not substantive or procedurally valid. On 6 September 2003 Dr. Jiri Orsula was not authorised to take such action with respect to the plaintiff

According to the plaintiff, it is clear that under the current application Dr. Jiri Orsula is claiming a larger number of assigned claims, and his alleged application for procedural succession on this legal fact is not only insufficient, but cannot be precisely identified and certainly could not be regarded as a procedural step.

31. The defendant in the submission of 8 October 2003 (SI7) commented on the decision of the Arbitral Tribunal to admit the new proceedings. According to the defendant the opinion of the arbitrators is contrary to the provisions of § 30 ZRft. Accordingly, the defendant submitted a legal action in the matter, which sought, inter alia, cancellation of the resolution by which the proposed new proceedings were allowed.

Regarding the resolution of the arbitrators to grant an extension to an agreement on the expert review to produce an expert opinion the defendant argued that the production of any expert opinion would be premature at this stage of the proceedings and uneconomic. Legal proceedings would at this stage be a barrier to the continuation of the arbitration.

32. The plaintiff in the submission of 8 Octobci 2003 (Y16) commented on the resolution of the arbitration agreement of the parties on the expert. It stated that it requested the defendant on 31 August 2003 to ensure that in representation in the management of the proxy in accordance with Act No. 201/2002 Coll. the defendant will not in future claim mappropnatencss of representation as the reason for the cancellation of any award in this case after the first court in July 2003. The defendant did not express an opinion. The plaintiff, among other things, will address its future comments to the defendant and an attorney who holds a power of attorney granted for representation in the proceedings.

The plaintiff also stated that it had sent the defendant a proposal for the agreement on experts of 30 June 2003, with reference to the applications filed by the defendant in these proceedings. The defendant did not respond directly to the application and slated that it did not intend to review the appointment of the expert The plaintiff indicated that the communication had not been served on the defendant because it changed its position and with this attitude of the defendant it is probably premature to propose a person to the plaintiff for the expert review. However, the plaintiff claims that it is ready to negotiate with the intention of the defendant to challenge the arbitrators.

33. The defendant in a submission of 15 October 2003 (S38) expressed its opinion on the concerns of both plaintiffs, whether the defendant is properly represented in the proceedings. The decision on this matter was within the exclusive competence of (he defendant and, in its view, the defendant has received the full power of attorney fur its current counsel, which indicated that it will undoubtedly be represented by this counsel. It has also indicated its willingness to the Office of the Government Representation in Property Affairs given that, under } 5. f) Act No. 201/2002 Coll. the arbitration procedure does not fall under that law.

With regard to any agreement of the parties regarding the expert who would prepare the audit reports, the position of the defendant remains that any performance of expert assessments would al this stage be premature and uneconomic. Still less did the defendant see a substantial difference in the procedural view of the parties in their agreement regarding the appropriate person and such an expert would, for the same reason, be willing It is probably not desirable in terms of objectivity, that such a person should be proposed. If (he tribunal upholds the intention to appoint an expert, it should do so in accordance with usual practice alone since, without the expert proposed, the law assumes that the parties will express an opinion on the expert and then make any reasoned objections.

34. The arbitrators by the Resolution 5 of 30 October 2003, decided: 1) that the accession of Dr. Jiri Orsula to the proceedings is not permitted, 2) that JUDr. Jiri Orsula is not a party to the proceedings for the alleged 30% of the claim against the defendant, the Czech Republic, made by the plaintiff Diag Human, Inc. and 3) that (his resolution must he applied to any procedural motions and claims made by JUDr. Jiri Orsula up to the date of this resolution. This resolution is justified in detail.

Given that the arbitrators had doubts about whether the Czech Republic was being properly represented in the arbitration proceedings, they turned to this issue with a request to the Office of the State in matters of property. In a letter of the Director of the Office of 23 September 2003 (X41), the arbitrators were told that the department did not have sufficient information from which they could draw an unequivocal conclusion that the Czech Republic in the present case is rightly bring represented by the Office. The arbitrators, accordingly, on

the procedural basis decided on 30 October 2003 by Resolution No. 7 that the documents of the proceedings would also be sent to the address of the Office of the Govemmen* Representation in Property Matters. On the same day, the arbitrators issued Resolution 6, by which the parties were ordered to submit within a specified period procedural proposals for the next steps in the procedure.

33. The plaintiff in a submission of 31 October 2003 (Y17) indicated its representation to the defendant in this case, for the designation of experts and additional evidence. The plaintiff agrees with the defendant that the representation by the Law No. 201/2002 Coll. is the representation in law, but has taken the view that the defendant does not draw the right consequences from this unconlested fact. In particular, it has drawn no conclusions as to the nature of the legal and institutional arrangements under which its scope is established by law in the form of procedural representation. In the present case the plaintiff is not involved in foreign investment. According to the plaintiff the Arbitral Tribunal in the present position of the defendant cannot avoid the question whether the defendant is validly represented.

The plaintiff acknowledges that the defendant does not intend to negotiate in respect of the person of the review expert, and has therefore suggested possible ways forward: that the review of the previously submitted expert reports should be conducted by a company which has demonstrable expertise in the pharmaceutical industry in the European context; that an expert based outside the Czech Republic should be appointed; that the arbitrators should encourage the defendant and the experts Dr. Lunaka and Dr Kochsnka to attach to the arbitration submission the documentation provided by the parties to the experts in connection wrth the expert's report as a basis for assessment

36. JUDr Jan Herds, Director of Legal Services in the Office of Government Representation in Property Affairs, by a note dated 3 December 2003 (XS9) informed the arbitrators, with regard to the representation of the Czech Republic in these proceedings, that for the information it is sufficient for them to consider the contents of the letter by which JUDr Zdenek Novacek, the lawyer for the Ministry of Health, on behalf of the Minister, responded to the letter from the Director of the Office of 24 October 2003 and insisted that it is the authorised legal representative of the Czech Republic in the proceedings. In this situation the Office of Government Representation in Property Affairs has no way to refute or accept the legal opinion of the Ministry of Health. It is best for the arbitral tribunal to determine the procedural representarion of the state in accordance with the law.

37. The defendant in the submission of 18 January 2004 (SI9) commented on the minutes of the meeting of arbitrators on 30 October 2003 and the resolutions recorded in them. It Btated that it noted the views of the arbitrators, but was still of the opinion that it was properly represented in this arbitration. The defendant is maintaining its position that any dispute of Czech legal entities with foreign capital participation (and the plaintiff is such a Czech legal entity), if such dispute relates to property claims of that legal person, is a dispute concerning the protection of foreign investments, because any form of foreign equity participation in a Czech legal person will also without any doubt be a form of foreign investment

It is important, however, that the arbitration agreement concluded does not allow the arbitral tribunal for the purposes of this arbitration to assess this question, and therefore the opinion of the arbitrators is not legally relevant and it is therefore not up to them to decide with whom they will continue to act In this situation, it is not possible in the opinion of the defendant to continue (he arbitration proceedings unless the defendant is able to meet the challenge of the arbitral tribunal to submit any proposals for further procedural steps in the proceedings. Accordingly, the defendant proposes that the arbitrators should issue a resolution to suspend the proceedings under § 109 para 1 point. b) CPC.

38th The plaintiff, by a submission of 19 January 2004 (Y19), indicated that it look note of the unchanged decision by the defendant not to open negotiations on the agreement with the plaintiff on the person of the expert and not to propose a person itsdf. The plaintiff itself approached several major institutions in the field of blood derivatives, and professionals in order that a proposal for the person of the expert, recommendations or opinions should be addressed to the presiding arbitrator. The plaintiff was doing so in an effort to speed up the proceedings in this stage and in the light of its experience of the proceedings intends to gather relevant proposals. It was continuing to seek at agreement with the defendant despite its public statements that it would ignore this question.

39. The arbitral tribunal invited the defendant on 22 January 2004 to comment within the deadline on the "submission of the plaintiff" of 19 January 2004. In addition, the defendant was

again called to discharge the obligations imposed on il by the order of 30 October 2003 to submit proposals for further procedural steps in this arbitration.

40. The arbitrators received on 1 February 2004 a copy of the application of JlTDr Jiri Orsula to determine the validity of the contract dated 17 January 2D04 (V 10), which it filed on 26 January 2004 with the District Court for Prague 1 against the Czech Republic as the first defendant and the company Diag Human, as. as second the defendant. That application, however, had no any legal consequences for this arbitration.

41. The plaintiff, in (he submission of 18 February 2004 (Y20), made a detailed comment on the proposal by the defendant to suspend the arbitration under $ 109 para 1 point b) CPC, According to the plaintiff the conditions in the above paragraph for the suspension of the arbitration process are not met and it is the obligation of the defendant to ensure its procedural representation under the applicable law. The plaintiff expresses the assumption that, with regard to the course of the proceedings, including the content of the submission of both sides on the representation of the defendant in these proceedings, the conclusion must still be excluded that the defendant is acting in good faith in the matter of its representation.

42. The arbitrators, at their meeting held on 11 March 2004, issued Resolution No. 8, by which the defendant was ordered within a specified deadline to inform the arbitrators who was authorised to represent Ihe defendant in this case. In the event that the defendant does not respond within the deadline, the arbitrator will continue to send all documents to the lawyer for the defendant JUDr Novacek and the Office of Government Representation in Property Affairs. The arbitrators also noted that the parries still disagreed on the person of the expert. Accordingly they issued Resolution No. 9, which required the parties to submit three proposals to the arbitrators on the person of the experts within a specified period. After their delivery, on the basis of these proposals an expert would be appointed by the competent general court applying the provisions of § 20 paragraph 2 ZRA.

43. The plaintiff delivered to the arbitrators on 26 March 2004 (Y21) a copy of "Statement of the second defendant of 17 March 2004 on the proposal of the plaintiff, the Czech Republic, on the issue of a preliminary measure on the terms of the proceedings", which was considered by the Regional Court in Brno. In this statement the company Diag Human, a.s., as the second defendant, expressed the opinion that an action for annulment of the resolution of the arbitrators could not be considered in administrative proceedings and therefore proposed that Ihe application on the obligations of the first defendant (the Office for Protection of Competition) to issue a decision should be rejected under the provisions of § 46 paragraph 1 point. b) c) of the administrative procedural code.

44. The plaintiff in the submission of 24 March 2004 (Y22), commented on the request of the arbitrators for proposals for the expert and said that it had tried several times to make similar requests to the defendant, but no agreement had been reached. Accordingly, it left the selection and appointment of the expert to the discretion of the arbitrators. In addition it informed the arbitrator that Ihe defendant had instigated before the Regional Court in Bmo proceedings under $ 79 of the Administrative Procedure Code, in which the application includes a proposal to initiate proceedings to cancel the resolution of the arbitrators which established the inadmissibility of the renewal of the arbitration. According to the plaintiff, irrespective of the doubt as to whether one action can be applied to such various claims, it is obvious that neither in administrative judicial proceedings nor in civil proceedings is the power granted to the court to conduct proceedings to annul the resolution of the arbitrators.

45. The arbitrators at their meeting held on 16 April 2004 again ruled that the defendant had failed to fulfill even a single point of the resolution of 11 March 2004 or comment on this resolution. In addition, the arbitrators noted that they had already several times extended the deadline for the parties to agree cm the person of the expert or to submit proposals on the person an expert The arbitrators also noted that the approach of the defendant to this arbitration did not indicate an interest in the resolution of the issue of this dispute and issue a final decision on the merits of the dispute.

Due to the fad that in the meantime there had been a change in the position of the Minister of Health, the arbitrators decided to give the new Health Minister time to consider the issue of the dispute and to give both sides time to make a further attempt to reach an amicable resolution of the subject of this dispute, or reach agreement on the person of the expert. By Resolution No. 10 of 16 April 2004, the parties were granted until the end of May 2004 to consult with the new Minister of Health on the subject of this dispute, to negotiate an amicable settlement of the dispute subject or to reach agreement on the person the experl.

46. The plaintifT, by a submission of 27 April 2004 (Y24), submitted to the file a copy of the resolution of the Regional Court in Brno of 20 April 2004, File No. 31 Ca 1/200] - 150, which decided on an action of the Czech Republic against the first defendant, the Office for Protection of Competition, and the second defendant, Diag Human, it., among other things, to cancel the order of the arbitrators of 12 September 2003 by which the action in question was rejected. Regarding this part of the action, concerning the abolition of the resolution of the arbitrators, the court stated that it was a proposal that could not be discussed in the context of administrative proceedings, in particular because arbitrators do not have a public status and are persons in private law.

47. The defendant did not react at all to the resolution of the arbitrators of 11 March 2004 and until the second half of May 2004 remained completely inactive.

On 26 May 2004 a letter was delivered to the arbitrators from the new Minister of Health MUDr Jozcf Kubiny, Ph.D., of 21 May 2004 (S20), in which he informed the arbitrators that, based on a detailed legal analysis of Ihe dispute in question and in consultation with the representatives of the Office of Government Representation in Property Affairs, he found that on this dispute the authority under § 3 of Act No. 201/2002 Coll. to represent the state rested with the Office of Government Representation in Property Affairs. In these circumstances, namely the cancellation of the power of attorney of the existing legal representative and its transfer to Ihe Office, the Minister asked the arbitrator for an extension of the deadline granted to him until the end of June 2004.

The assignment of the representation of the defendant in this case to the Office of Government Representation in Property Affairs thus finally resolved the question of who is authorised alter the effective date of Act No. 201/2002 Coll. to represent the defendant, a question whose resolution was only necessary because the Ministry of Health complicated the position, which as a result unreasonably extended the proceedings and raised doubts about the proper representation of the Czech Republic in these proceedings.

48. The arbitral tribunal by an order of 26 June 2004 at the request of the Minister of Health of 21 May 2004 extended the deadline for the parties to negotiate an amicable resolution of the subject of this dispute or reach agreement on the person of the expert umil 30 June 2004.

49. On 30 May 2004 the arbitrators received a submission from the Office of Government Representation in Property Affairs of 28 June 2004 (S21), which indicated that the Office had been passed by the Ministry of Health documents relating to the arbitration and that therefore the conditions were met for exclusive negotiations within the meaning of § 3 1 point. b) Act No. 201/2002 Coll.

The defendant suggested that the arbitral tribunal, in the selection of the expert, should choose from among the following companies:

a) PncewalcihouseCooperS Czech Republic, sro

b) £ & Y Valuations sro

c) KMPG Czech Republic, sro

According to the defendant the complexity of the expert task leads it to formulate the requirement that the determination of the extent of hypothetical damages (lost profits) should be carried out by a party professionally proficient in multiple disciplines, with an international reputation and a substantial number of references in similar cases, as well as knowledge of the European or world market and adequate personal, independent and impartial capacity.

At the same time with regard to the anticipated need for obtaining and evaluating export assessments in the field of blood plasma, the defendant proposes that the arbitral tribunal should also appoint one of the experts from professional consultants, as also proposed by the defendant. On the method of cooperation of the appointed experts (and consultant), the defendant has the same position as on the appointment of the experts and possibly of a consultant. After their appointment, the defendant will submit draft questions which should be answered by the experts, along with any professional consultant.

50. The plaintiff, in the submission of 19 July 2004 (Y2J), indicated that it was prepared to accept one of the designated companies and make a proposal to its appointment as the expert in the proceedings on the joint proposal of the parties. It also asked the defendant for assurances that the defendant would not correspond with any of these companies on this matter, even if only on an advisory and informal basis. Once such assurances had been delivered to the plaintiff, it would immediately make its proposal. For completeness, the plaintiff added that the defendant had not responded to its notification of readiness to negotiate an amicable resolution of the case.

51. The plaintiff, in the submission of 22 July 2004 (Y26), stated that, given the indication by the defendant that it did not accept any of the proposed companies and in an effort to expedite the proceedings, it proposed that E & Y Valuations sro be appointed expert. The plaintiff therefore accepted, in order to expedite the arbitration proceedings, that a foreign company should be appointed expert. Instead, it only require that the expert opinion should be provided by a certified foreign authority from among these same companies provided that the expert methodology used was adequate.

The plaintiff, however, refused to allow the arbitrators to appoint the expert consultant. It was impossible that an expert should be appointed on the basis of the primary information from consultants. All necessary input variables for calculating the amount of damage were known

from official statistical data of the Czech Republic, die National Blood Transfusion Service, the Ministry of Health and General Health Insurance. Until 2000, all these data were collected in the framework of the common procedure, selected, verified and accepted by both parties. On the basis of these data the experts Dr. Lunaka and Dr Kochanka based their expert conclusions.

52. The arbitrators, by Resolution No. 12 of 30 July 2004: I) appointed as the expert in these proceedings E & Y Valuations sro, based Karlovo namesti 2097/10, Prague 2, Postcode: 120 00, ID: 161905S1, registered in the list of experts (hereinafter referred to as "expert") to submit an expert report within the deadline set by the arbitral tribunal, 2) gave the parties a deadline to 31 August 2004 to submit proposals for the wording of the questions far the expert, 3) decided that after receiving the proposal for the wording of the questions (or the expert the arbitral tribunal should determine the expert task; 4) the expert should be given a deadline for the communication with the time required for the expert's report and the advance payment to be made by the parties.

53. The expert, by a note dated 13 August 2004 (X91), told the arbitral tribunal that the necessary information concerning the amount of the advance required to carry out the expert assessment and time needed for its preparation should be determined after the finalisation of the tasks for the expert.

54. The defendant, in a submission dated 30, August 2004 (S22), proposed a total of nine questions to the arbitrators. In addition, it stated that, on the issue of the amount of possible damage, but also on the question of a causal connection between the letter of the former Minister MUDr Bojar and the amount of damage arbitral tribunal should submit supplementary material, which it is confident that it can make available to the experts.

55. The plaintiff, by a submission of 30 August 2004 (Y29), proposed to the arbitrators seven questions that should be asked of the experts.

56. The arbitrators, by Resolution No. 13 of 9 September 2004, set the Experts the following task based on the proposals of the parties:

"1) What was *the amount of human blood plasma in the Czech Republic from 1992 to 2001, with a breakdown a) for various years, b) and also by type of human plasma (undifferentiated, SP, FFP), c) minus the amount of blood derivatives firoduced by a domesite manufacturer in 1992-1998, sp USOL - SEVAC?*

2) Determine the purchase price of a litre of blood plasma in 1992-2001 (the price for the plaintiff), taking it into account that the purchase price was based on average production cost of health care facilities (transfusion stations) for the collection and initial processing of one litre of blood plasma. Indicate whether this is the price charged by the Ministry of Finance to "eligible entities". Review the data on the purchase price of a litre of blood plasma, as determined by the Czech Republic - Ministry of Health and included in the annex to the expert opinion of Kochdnka and Lunaka. Determine the purchase price of a litre of blood plasma: a) for each calendar year, h) and also for each type of human plasma (undifferentiated, SP and FFP)?

3) Ifhot *blood derivatives did Novo Nordisk register in the CR in 1992-2001 imd what* was *Conneco (Dtag Human) able to import each year into the Republic? How were these blood derivatives manufactured by Novo Nordisk virus-treated (how many degrees of inactivation*

ivert used in the production of various types of blood products each year 1992-2001 by Novo Nordisk)?

4) What was the production capacity of Novo Nordak for the production of various types of blood derivatives? What amount of human plasma per year did Novo Nordisk process for the CR in the individual years 1992-2001. What was the average industrial yield of blood products manufactured by Novo Nordisk: a) albumin in grams per litre of plasma b) immunoglobulins in grams per litre of plasma, c) average purl/led Factor VIU in International Units (1U) per litre of plasma in 1992-2001, Do this a) for individual years b) and also by type of plasma (undifferentiated SF and FFP) with regard to the data on average yield, as given in tht report of the CR. which is attached to the opinion of the experts Kochdnka and Lunoka

5) Determine the average cost of processors (contractual fractionators) for the processing (fractionation) per litre of blood plasma for three derivatives (albumin. Imoglobuhn andfactor VU1 with the average yield in 1992-2001, Determine the average cost of production a) for each year and b) also for each type of plasma (undifferentiated SP and FFP).

6) What number of Factor VIII and antithrombin III was made available to Dlag Human by Novo Nordisk for the CR in 1992-2001.

7) Find the average price of the derivatives in the CR market, determined by VZP (what was the VZP settlement) in the Individual years 1992-2001: a) CZK per gramme of albumin, b) CZK per gramme of immunoglobulin, c) CZK per international unit (1U) average pure Factor VUl d) CZK per gramme of antithrombin, which could be traded in individual yean in the Republic by Novo Nordisk?

8) Determine the proportion which Diag Human could reach on the primary market for blood plasma in the CR in 1992-2001 a) for individual years b) and also by type of plasma (undifferentiated. SP and FFP). In determining the short take into account: a) the urgent need of blood plasma derivatives and the possibility of obtaining these derivatives prior to 1990, the same thing in 1990 when the company Conneco (Diag Human) entered the Czech market, taking into account the number of registered haemophiliacs in UHKT and University Hospital Motol, b) the conditions and results of entering a tender organised to ensure supplies of products from blood plasma by the Ministry of Health, held by the selection committee in September 1990, c) assume (hat Dtag Human society in 1991 and 1994 won the lender the processing of plasma and other tenders announced in 1998 for two years each health care facilities, d) did the legislation in the CR in 1992-2001 allowed importation by the foreign competitors in question of manufactured plasma derivatives, e) and the WHO recommendations, resolutions of the European Parliament (national self sufficiency, the reasons this requirement), j) the economic link between the primary market for blood plasma and the secondary market in products from blood plasma with regard to (l) market size in the CR, (ii) the above-mentioned recommendations on national self-sufficiency (in) the design of the contractual arrangements of Diag Human for contract fractionation, which involved a guaranteed subscription of all derivatives, obtained from blood plasma ofdonors from tht CR, (iv) the fad that in 1990 the company Conneco (Diag Human) was the only partner for contrad fractionation in the CR, whose blood products plasma were registered in the CR.

9) Determine the amount of the loss of Diag Human in 1992-2001 in the form of lost profits that Diag Human would probably have achieved through the export and processing of blood plasma, especially with the purchaser of the line Hemasure?

10) Was it possible to minimise the loss to the plaintiff arising after the termination of cooperation on (he part of Novo Nordisk through the establishment of cooperation with other blood plasma processors, especially with the purchaser of the production line of Hamasare?".

The arbitration tribunal, in the interests of procedural economy, decided to accept the wording proposed for the majority of questions, 90 that these questions could not be subsequently be submitted for an expert opinion, which would lead to the need to produce a complete expert opinion. Some of the proposed questions were considered by the arbitration tribunal to be legal issues, the evaluation of which could not be carried out by the experts, and they were therefore not asked.

The arbitration tribunal instructed the expert to provide expert evidence of a certified foreign authority of his acquaintance that the expert's methodology used for the processing of the expert report was adequate. The parties were instructed to provide the necessary assistance to the experts.

57. The plaintiff, in the submission of 20 September 2QCW (Y30), commented on the draft expert questions and asked the arbitrators to clarify their text. At the same time it commented on the procedural approach of the defendant. Judging from public statements of the Czech Republic and from the wording of its questions, this party intends to prove a causal connection between the defendant's conduct and the damage incurred by the plaintiff. In the opinion of the plaintiff the defendant's liability has already been decided by a binding interim award.

In addition, the plaintiff staled that In June 2094 the defendant made a scries of public appearances, in which it announced the state of readiness to reverse the arbitration with newly acquired evidence to refute the causal connection as a component of the plaintiffs claim. A public announcement w<< made to dial effect by the President of the Parliamentary Enquiry Commission, JUDr Hana Sediva, and the Minister of Health MUDr Kubiny.

The new evidence supposedly consisted of the documents submitted by Novo Nordisk, which obtained a commission of inquiry for its work. The defendant has not yet offered the evidence announced, but if the defendant intends to prove anything with such evidence, this approach must be excluded because it is illegal. The reason is the way in which the President of the Parliamentary Enquiry Commission acted prior to the interim report end which consists in the handling of documents obtained during the investigation. According to the public statements of JUDr Scdrva, these are documents, capable, in her opinion, of producing a substantial change in the procedural position of one of the parties in respect of compensation, namely the Czech Republic. The procedure of the Parliamentary Enquiry Commission in this matter is unlawful, as confirmed - including in public • by its president. These documents were, shortly after their acquisition by the Parliamentary Enquiry Commission, made available to the parties for use in the compensation proceedings. Minister Dr Kubiny confirmed receipt of these documents. This procedure violated the law.

The plaintiff has repeatedly protested against the procedure of the defendant, the Czech Republic, which has repeatedly and unlawftdly intervened in the plaintiff s constitutional rights to due process. The legal practice of the Parliamentary Enquiry Commission, which confuses the slate investigation with actions to support the state in the proceedings, is another such act. The evidence that the defendant received from the Parliamentary Enquiry Commission in this manner cannot be used in the arbitration. This applies not only to certain evidence such ns the

information storage media obtained by the defendant from the Parliamentary Enquiry Commission, but also to the evidence and information itself, should the defendant intend to procure for the purposes of the proceedings other evidence containing the same information.

58. The expert, by a note dated 4 October 2004 (X96), told the arbitrators that the expert's task covered a series of medical questions for which lie was not qualified, that he would have to obtain for the examination documents of the parties and that he required the commercial arrangements for his remuneration, because the compensation set by the decree on the remuneration of experts and interpreters stipulated considerably lower rates than the normal hourly rate of specialists. The expert further stated the subjects on which in the completion of the report the expert would make an expert assessment. One of these subjects was the agreement of the parties in a legally valid and enforceable manner to undertake jointly and severally to indemnify Ernst & Young for any future claims made against the experts, other companies in this group, its employees, directors or partners, which might result as a response to the assessment prepared for the arbitration.

59. The plaintiff, in the submission of 18 October 2004 (Y32), commented on the communication of the expert of 4 October 2004. The plaintiff infers from this statement of the expert that his reservations about the legal requirements of an expert performing a task are based on a misunderstanding of the basic operations of the expert and confusion by the expert of commercial activities based on a private contract with a situation in which the expat is appointed in a procedure governed by statute. Such a situation falls under the materia! scope of the law on experts and interpreters. His assessment of same of the questions is quite obviously wrong, simply because (he expert has still not perused the basic documentation of the dispute. The plaintiff considers that the opinion of the expert should not be regarded as a refusal to perform any actions.

60. The defendant, in the submission of 24 October 2004 (S23), said that it thought it should be noted that, in order to clarify and narrow tbe issues in the most expedient form for the expert, the defendant indicated, in the submission of TO August 2004, a number of legal aspects of the case, in respect of the scope and amount of possible damages. The defendant is aware that the causal connection between the conduct of the Minister MUDr Bojar and the loss has already been decided and the current representative is compelled to respect it, even though deeply convinced of the incorrectness of this decision. It considers, however, that a causal relationship must be examined not only in relation to the existence of the Loss but also in relation its amount. It is necessary to leave great scope for resolving legal issues when the possible amounts of loss are closely related and the solution, even before it is considered by the expert, could involve an amount of Loss covered by the expert task or make the breadth of reference for the expert significantly narrow.

The defendant therefore again proposes to the arbitration tribunal that at this stage it should deal with the legal issues, in particular the fact that the plaintiff was not a processor of blood plasma, but merely the vehicle for trade in products from it, and therefore could not be successful party in tenders organised by (he Ministry of Health for the sector in the nineties.

61. The arbitrators, by Resolution No. 14 of 5 November 2004, instructed the Expert within a specified deadline to inform the arbitration tribunal whether he would produce an expert opinion, by what deadline and what should be the amount of the deposit for its preparation.

62. The expert, by a note dated 10 December 2004 (XI08), told the arbitration tribunal that he was prepared to assume the role of expert in the present dispute, that the expert report would be drawn up within four months after receipt of ail documents and information from the arbitration tribunal or the parties and that based on preliminary calculations he required an advance of CZK 2,400,000.00.

63. The arbitrators, by Resolution No. 15 of 19 December 2004, audit the parties within the deadline to make the deposit for the production of an expert opinion by the expert, each for the amount of CZK 1,200,000.00. The expert informed the arbitrators that, within the specified period of five months from the day of deposit to his account, you produce an expert opinion under point I of the resolution of the arbitrators of 9 September 2004. The arbitrator then gave the parties time to comment on the future expert opinion.

64. The defendant, by the submission of 20 December 2004 (S24), gave the arbitration tribunal a proposal to amend the wording of the questions for the expert and written statements from the witnesses Thaninga Torben Larsen, the former director of the plasma unit of Novo Nordisk, and Anders Jensen, the legal representative of Novo Nordisk. In the opinion of the defendant, the testimony shows a very sLight degree of causal connection between the letter of the former Minister MUDr Bojar and examination of collaboration between Novo Nordisk and the plaintiff, as well as the scope of a cooperation in terms of tone and volume. The defendant asks the arbitration tribunal for the facts of the statements to be taken into account especially in taking decisions about the possible amount of compensation.

65. The plaintiff, by a fax submission dated 30 December 2004 (Y33), told the arbitration tribunal that a request had been addressed to the police department for a waiver of confidentiality of the presiding judge in the dispute procedures with the police authority initiated under § 258, paragraph 3 of the Criminal Code to the extent that the procedure involves proposals to gain access to the arbitration file. At the same time the plaintifTgave a copy to the arbitration tribunal of the opinion of the police authority, which in some detail related certain facts of this arbitration, and in the conclusion of this opinion stated that none of the arbitrators was relieved of his statutory duty of confidentiality.

66. The plaintiff, by the submission of 6 January 2003 (Y34), delivered to the arbitration tribunal a written copy of the opinion of the police authority of 30 December 2004.

67. The arbitration tribunal, by resolution No. 16 of 9 January 2005 imposed on the parties a duty to notify the advance to the expert, changed the text of section 7 d) of the questions for the expert to "CZK per international unit (IU) of antithrombin" and rejected the parties' proposals for other changes to the wording of the questions.

68. The plaintiff, by the submission of 10 January 2005 (Y37), told the arbitration tribunal that it had transferred the agreed advance to the account of the expert.

69. The defendant, by the submission of 24 January 2005 (S23), told the arbitration tribunal that it had transferred the agreed advance to the account of the expert.

70. The plaintiff, in the submission of 7 March 2005 (Y38), told the arbitrators that it had contacted the expert and handed him the documents.

71. The plaintiff, in the submission of 17 March 2005 (Y39), recapitulated the amount of the claim put forward in these proceedings. It was claiming from the defendant damages in the amount of CZK 199,313,095.00 by the challenge of 13 September 1995 addressed to the defendant. In the proceedings the plaintiff was also claiming the following loss of profits:

a) a claim in the amount of CZK 1,873,174,500.00 by the application of 15 October 1996;

b) the amount of CZK. 785.375,000.00 as loss of profit for die period hum 1 April 1995 to 31 December 1996 in an amendment and supplementary submission to the application registered for the total amount of CZK 1,965,175,000.00, delivered to the arbitration tribunal on 30 October 1996, in which, in addition to loss of profits, the plaintiff demanded CZK 67,500,000.00 in damages for injury to commercial reputation, CZK 91,300,000.00 as financial satisfaction, CZK 21,000,000.00 as compensation for actual damages;

c) the amount of CZK 2.073,938,880.00 by the submission of 10 February 1997 in extension of the claim.

The interim award of 19 March 1997 then rejected the claim in the amount of CZK 67,500,000.00 far damage to the commercial reputation of the plaintiff and for the claim for loss of profits found the beginning of the first harmful event to have been I July 1995.

The plaintiff Is also claiming compensation for loss of profits, based on the amount of plasma produced in the CR market In subsequent years, namely from 6 January 1997 (the already applied for compensation for loss of profit calculation includes lost profit until 5 January 1997) to 30 May 2000 (the end of a causal connection between the defendant's unlawful conduct and the loss) with accessories, In the amount of CZK 330,000,000.00 for each yeai.

The plaintiffs claim is as follows:

a) CZK 199,313,093.00 withl 5.333% interest with effect from 1 November 1995 until 21 October 1996;

b) CZK 1,873,874,500.00 with 14.876% arrears interest from 22 October 1996 to 26 February 1997;

c) C2K 2,073,938,880.00 with 14.2% interest from 27 February 1997 until payment;

d) CZK 325,479,452.00 with arrears interest from 1 January 1998 until payment;

e) CZK 330,000,000.00 with arrears interest from I January 1999 until payment;

0 CZK 330,000,000.00 with arrears interest from I January 2000 until payment;

g) CZK 137,500,000.00 with arrears interest from I June 2000 until payment;

h) reduced by the amount of CZK 326,608.334.00; from 15 January 2003 the plaintiff is claiming arrears interest on the reduced amount.

Thc plaintiff justified the change of the application on the grounds that it is authorised to dispose of the subject-matter, since the change of the application maintains ail of its procedural change, only changing the level of the claimant amounts, and that the conditions are met for the admission of the change the application. The change of the application is based on two fundamental assumptions: a) If it had not through the defendant's conduct been excluded from the Czech market, it would have continued its business activities based on the organisational and legal form of contract fiactionation with a profit from the sale of blood derivatives prepared by Novo Nordisk until 1 May 2000. Until that date, in terms of the products Factor VIII, Oammaglobulin and Human Albinum it had 100% of the Czech primary market, and quite a substantial part of the secondary market, simply because the Czech medical facilities concluded an arrangement where it is the plaintiff and its competitors for a mutual commitment to have all products manufactured by plasma Czech suppliers. This contracting practice is still applied in the market. The result is that Czech hospitals are supplied with the necessary volume of blood derivatives, while the supplier has a guaranteed market. The surplus can be re-exported to another market, less attractive to the supplier in price terms.

The ptadmifT, in point IV of this submission, extends the application and proposes that die arbitrators should accept the application in the following version:

77M defendant is ordered to pay the plaintiff

- *as compensation in respect of lost profits for the period from I July i 992 to I May 2000 the amount of CZK 4,358,194.787 00;*

- *as arrears interest for ihe period to 30 September 2004 CZK 4,341,427,748.00.*

- *as total of damages and arrears interest to 30 September 2004 CZK 8.669,622.535 00;*

- *as costs, the amount will be quantified*

- *and arrears interest in the amount of CZK 1,625,536.00 per day startingfrom I October 2004 until payment, all within 30 days of the final arbitration award.*

72. JUDr Jiri Orsuia, in the submission of 17 March 2005 (VI1), staled that the validity of agreements for assignment of the claims of the plaintiff against the defendant is a matter upon which the arbitrators' decision is still pending in the arbitration, and therefore proposed that the arbitration tribunal should issue the following resolution: The arbitration is subtended for 30% of its subject matter until the definitive resolution of the first of the judicial proceedings which are now before the District Court for Prague 10, case no. M C 313/2004, Prague 1 case no. 22 C 64/2004 and Prague 2 case no. 23 C 53/2004.

For the period after the first definitive judgement by the court upholding ary action of JUDr Jiri Orsuia, he proposed the following order: "The legal validity of this resolution will make JUDr Jiri Orsula become the second applicant in the present arbitration.".

73. The Minister for Health, Dr. MUDr Milada Emmerova, CSc., by a letter dated 21 March 2005 (S27), told the presiding arbitrator that pursuant to § 6 paragraph, 2 ZK& she was lifting confidentiality in this dispute so that the police authority, through Commissioner of Police Major. Zdenek Tomic, could see the file materials and take a copy thereof for the purpose of criminal proceedings and, if necessary, during the further course of the criminal

proceedings, (he originals of the documents in the file on the basis that certified copies will be left in the file.

74. JUDr Petr Toman, as counsel for lng Zdcnck Cask*, by a submission of 21 March 2005 (Al), informed the arbitrator that lng Zdcnck Caska is now the 5% creditor of the original claim of the defendant against the plaintiff on the basis of assignment agreements concluded with JUDr Jiri Orsula 2 September 2004. JUDr Petr Toman further stated that with regard to the decision of the arbitration tribunal of 30 October 2003 lng Zdcnck Caska had filed an "Action - main intervention according to § 91a of the Code of Civil Procedure* of 3 March 2005 with tbe Municipal Court in Prague, attached in copy to the submission.

75. The plaintiff, in the submission of 5 April 2005 (Y41), informed the arbitrator of its proceedings with the expert.

76. The arbitration tribunal, by Resolution No. 17 of I April 2005, gave the defendant time to comment on the extension of the claim of the plaintiff on 17 March 2005 and by Resolution No. 18 ordered JUDr fin Orsula and lng Zdcnck Caska pay the remuneration for the arbitrators for handling their proposals in this arbitration.

77. The defendant, in the submission of 22 April 2005 (S28), rejected die legitimacy of the plaintiffs claim in its entire content, for the reasons already given in the submission and discussed further in the closing statement. In addition, it informed about contacts with the expert and the documents submitted to the expert

78. JUDr Petr Toman, in the submission of 27 April 2003 (A2), told the arbitrators that lng. Zdcnck Caska was willing to conclude with the arbitrator in accordance with Article ITI of the arbitration agreement a new agreement on the remuneration of the arbitrators, and on that basis to pay additional compensation to the arbitrators, but only if he is or becomes a party to the arbitration. In the event that he is not a party to the arbitration for any reason, and docs not become a party, then there is no legal reason for him to pay remuneration as in that case tbe arbitration agreement would not apply to him and thus give him an obligation to pay.

79. The defendant, in the submission of **4** May 2005 (S29), informed the arbitration tribunal of its meeting with expert and the documents handed over to the expert.

80. The defendant, in the submission of 10 May 2005 (S30), informed the arbitration tribunal about (he documents handed to the expert.

Bt. The arbitration tribunal, by resolution No. 19 of 16 May 2005, admitted the expansion of the application according to tbe text contained in the submission of the plaintiff of 17 March 2005.

82. The expert, in the memo dated 16 May 2005 (XI42), asked for an extension of the deadline for submission of an expert opinion at least until 15 July 2005. His request was justified by the substantial number of documents and the complexity of the consultations in the final version meeting the requirements of the foreign expert Ernst £ Young.

83. The arbitration tribunal, by resolution No. 20 of 19 May 2005, extended tbe deadline for the expert on his request for the drafting of an expert opinion until 15 July 2005.

84. The expert asked by e-mail on 24 May 2005 for copies of specific documents in the file. These copies were sent by Slue presiding arbitrator to the expert on 31 May 2005 and delivered, according to the receipt of the expert, on 1 June 2005 (XI55). Both parties were informed by the presiding arbitrator of the release of these documents on 31 May 2005 (XI53 and X154).

85. The arbitration tribunal, by resolution No. 21 of 28 June 2005, instructed the parties to comment within a specified period on the proposals of JUDr Jiri Orsula, contained in its submission of 17 March 2005.

86. The expert, by a note dated 4 July 2005 (XI63), again asked, by reason of the considerable scope of work remaining, for an extension of the deadline for submission of the expert opinion at least until 15 August 2005.

87. The arbitration tribunal, by resolution No. 22 of II July 2005, extended the deadline for the expert on his request for the submission an expert opinion by 15 August 2005.

88. The plaintiff, by the submission of 12 July 2005 (Y42), informed the arbitration tribunal that it was making the submission of the Police of the Czech Republic. The plaintiff also reported that it had told the defendant the reasons for the police investigation of his conduct in the dispute in that through the public disclosure of evidence by the defendant's activities questioning the final arbitral awards must be deemed illegal. It also mentioned that an appropriate response would still be considered to be the release of the major documents showing the nature of the dispute procedures and the conduct of the defendants, as well the notification of the arbitrators.

The plaintiff considers it necessary to draw particular stlention to the procedure of the Parliamentary Enquiry Commission on the procurement of new evidence. This method of obtaining evidence is illegal. Equally incorrect and untenable are the findings of the Parliamentary Enquiry Commission and the subsequent assertions of the defendant in this dispute.

89. JUDr Jiri Orsula, through a fax dated 14 July 2005 (VI2), sent a request to the presiding arbitrator to receive a copy of the decision of the arbitration tribunal of 27 May 1998 indicating the legal authority for the purpose of the proceedings conducted by him.

The presiding arbitrator also responded to this request by a fax communication dated 15 July 2005 (XI69) to the effect that he was bound according to § 6 paragraph 1 ZRft to confidentiality and, because JUDr Jiri Orsula is not a counsel in this case ror a party to the dispute, the requested information would not be provided.

90. The expert, on 22 August 2005, submitted to the arbitration tribunal "Expert opinion No. 23/12414192/05 on the answers to questions posed to the expert in arbitration of the ad hoc dispute APS 06/2003 of II August 2005 (X172a-X172d)\ hereinafter the" expert opinion*. The expert opinion was handed over to the parties on the same day. The expert responded in detail to all the questions put by the arbitration tribunal. The method used to produce the expert Opinion were examined by an independent expert at Ernst *A* Young in Ziirich on 10 August 2005 and found to comply wdih international practice in similar cases.

With regard to the detailed answers to individual questions of the arbitration tribunal, the arbitration tribunal does not consider that it would be efficient at this point to quote the final

arbitral award. The parses must have enough time to become acquainted with them and comment on them. Given the state of the arbitration, the tribunal considers that one of the key answers will be the answer to question 9.

The amount of lost profit, which the plaintiff would probably have achieved from export and processing of blood pLasma produced in the Czech Republic and the subsequent sale of blood plasma derivatives made from it, is estimated by the expert assuming the validity of the criteria in this section of the expert opinion, estimated to be in the range between CZK 2,449,964,000.00 and CZK 4,628,040,000.00 depending on the market development variant, which is considered by the arbitration tribunal to have a real probability approaching certainty.

Variant I. is based on the assumption that after the period 1992-2000 SEVAC was not able to compete fully with the plaintiff as the wanner of tenders in 1991 or 1990 - the total amount of lost profit was CZK 4,628,040,000.00. Variant II. is based on the assumption of the survival of SEVAC os a full plasma processor and manufacturer of complete range of quality blood products and under other assumptions II.A - the total amount of lost profit of CZK 3,733,762,000.00 and II.D - the total amount of lost profit of CZK 2,449,964,000.00.

91. The defendant, by a submission of 26 August 2003 (S31) with regard lo the extensiveness of the text of the expert opinion and its severity and assessment, requested an extension of the deadline for comments on the expert opinion by 90 days.

92. The plaintiff, in the submission of 29 August 2005 (Y45), commented on the defendant's request to extend the deadline for comments on the expert opinion. It stated that the requested period was excessively long, since the expert's opinion did not consist of thousands of pages, but is on about 80 pages. The plaintiff proposed a reasonable period of 30 days. It also wanted the plaintiff to apologise for the publication of findings which were immediately repotted in the press. It added that this was the arrangement of the parries on Ihe reciprocal obligation of confidentiality. The plaintiff asked the defendar4 again to respect the fact that the defendant is the State itself, and therefore an embodiment of state power, and in particular that its executive decision must respect the independence of the judiciary, in this case in arbitration. The plaintiff considered unlawful for the defendant to reject the legitimacy of the legally granted claim of the the plaintiff. Attached was a copy of the submission by the plaintiff to the Prime Minister of the Czech Republic of 29 August 2005.

93. The arbitration tribunal, by resolution No. 23 of 5 September 2005, extended the deadline for the parties to comment on the expert opinion until 22 December 2005, even though they shared the opinion of the plaintiff that the defendant's requested deadline for comments on the expert opinion was unreasonable. The actual text of the expert opinion was not extensive and most af the attached document was available to the defendant because of the earlier submission by the plaintiff or it itself in the present proceedings.

Although this request for extension of time by the arbitrators is another example of unwarranted extension of arbitration and obstruction on the way to the final decision on the part of the defendant, the arbitrator decided to meet the request of the defendant regarding the deadline to comment on the expert opinion to be extended in order lo question the expert, and that caused speculation regarding the route to the final decision in the matter.

94. The defendant, by the submission of 6 September 2005 (S32a), commented in detail on the expert opinion, and attached to its submission a statement from the Ministry of Health,

identified as Annex to Ref 28850/2005, undated and unsigned by anyone ($32b) and an Analysis for the clarification of the expert opinion on Diug Human against the Czech Republic on 6 September 2005, prepared by Dcloitte Czech Republic (S32c).

in the opinion of the defendant, the expert opinion does answer the questions formulated by the arbitration tribunal, i.e. questions which are to some extent different from those that the defendant considered crucial far the correct assessment of the case. The defendant is forced to respect the fact that in the matter it has been definitively decided otherwise twice, but is still convinced that the existence of a causal connection is necessary in the proceedings and will continue to explore this in relation to the scope and amount of loss passible and believes that it has given the arbitration tribunal sufficient evidence of the fact that it can be concluded that a causal connection between the conduct of the defendants and the level of the amount of damages docs not exist and objectively cannot exist.

The expert opinion does net take into account the actual possibilities of the plaintiff in the market for blood plasma in the Czech Republic in the period 1992 - 2001 and therefore contains very misleading conclusions about the possibilities for die plaintiff on the Czech plasma market, because it Ignores the fact that the market was regulated and that, ultimately, was governed not so much by monitoring the qualities and possibilities of individual competitors, but by die decision of the regulator on the competition and Its subjective evaluation of candidates.

The person who did not want llie plaintiff to act and trade after 1992 was clearly the Czech party, namely the Ministry of Health. It is obvious that such an attitude was perfectly legal and it is also clear that this is a different issue than that of the suspension of cooperation with Novo Nordisk. Based on this fact, it is necessary to demonstrate the lack of jurisdiction of the arbitration tribunal for the dispute over the loss of profit caused by the negative attitude of the defendant to the plaintiff, not the letter of the Minister MlJDt Bojar.

The defendant further argues that the expert in several places fo its report dearly sets out findings made by studying sources whose accuracy and authoritativeness it is not able to examine. This reduces the informative value of its expert opinion. It also lias formal defects. The basic cause of the defect in the report, in the opinion of the defendant, is the questions, whose formulation as a result that the expert only provided partial evidence of his and also addressed legal issues and finally speculated beyond the actual evidence in the file.

The defendant also commented in detail on the answers to individual questions. On question No. 9 it stated that the requirement for expert detemination of the amount of loss in the form of lost profits is a requirement to answer a legal question. The result of an expert examination, however, can not be an answer to a legal question. That belongs exclusively and solely to the arbitrators. The defendant also raises doubts about whether it is possible to establish actual lost profits, rather than abstract profits in the meaning of § 381 Commercial Code.

The defendant has made proposals for additional evidence. The plaintiff should: demonstrate on the basis of what facts it is assuming that the defendant has no objections to the documents which were sent to prepare the opinion of the experts Dr. Ing. Lunaka and Ing. Kochanks and the Expert Institute Novota as; show how derivatives were registered in the Czech Republic, and on what date registration was completed with various derivatives; suggest the average price of the derivatives on the Czech market, and, if these pnecs were subject to

VAT, indicate the applicable VAT; prove whether the termination of cooperation with Novo Nordisk was caused exclusively by the letter of the Minister of Health, and it should demonstrate that there were no special factors that would have caused the termination of cooperation with Novo Nordisk, e.g. insolvency of the Yugoslavian customers and the debt incurred by the plaintiff; produce economic returns, or any other relevant documents, relating to its business activities in the former Yugoslavia. The defendant asks for an oral hearing for the interrogation of the expert.

At the conclusion of its submission the defendant argued that the tribunal should in particular examine whether the letter of the Minister MUDr Bojar was the sole cause and the only tortious action that led to the result that the plaintiff suffered a loss in the form of lost profits. In addition, it notes that if the tribunal concluded that the letter from Minister Bojar was not tbe only fact that ultimately caused the plaintiff damages in the form of lost profits, then the defendant again argues that the tribunal should be forced to stop the proceedings from lack of jurisdiction, or alternatively that the arbitration court should only decide on the amount of damages that arose in connection with that letter.

95. The defendant, in the submission of 14 September 2005 (S33), acknowledged receipt of the resolution of the arbitrators of 5 September 200J to comply with its request for an extension of the deadline for comments on the expert's report until two days after the expiration of the original deadline far comments on the expert opinion. The defendant with respect to tbe grounds of the resolution stresses that its request was by no means intended unnecessarily to delay the decision and put obstructions in the way of it and in this situation asked the arbitration tribunal to consider and rule on the objection of bias. It also stated that it considered the deadline extended and requested to be notified of the timetable for further action in the proceedings.

96. The plaintiff in a submission of 20 September 2005 (Y47), commented to the arbitration tribunal on the objection of bias raised by the defendant, which it considers unfounded. As regards the overall procedural situation, the plaintiff considers the obstructive practices by the defendant to be more than established. The same features are characteristics of the unfounded objection of bias in the arbitrators.

97. The plaintiff, in the submission of 26 September 2005 (Y48), reiterated its objection of bias against the arbitration tribunal. It said that Parliament on 21 September 2005 debated a government bill amending law no 124/2002 on funds transfers and payment systems, as amended by law no 257/2004 and other related laws and the proposal presented by MP Koudelka for an amendment to ZRft, which proposed, among other provisions, "that the State may not enter into an arbitration agreement and may not be a party lo arbitration and any arbitration, still open, including a review in which the state is a party to the arbitration, should be taken over and completed by tbe court, which is in the position of a court of first instance for an action brought under the Civil Procedure Code". The entry into effect of the amendment was proposed for 1 January 2006.

The plaintiff expresses the assumption that this remarkable attempt by the defendant is motivated precisely by the present arbitration. MP Koudelka is the same person as, in connection with the present arbitration, filed a "legal opinion" for the defendants in 2001, which recommends to the defendant to delay the dispute at least until the parliamentary elections. The plaintiff regards this as another attempt by the defendant to block its right to fair proceedings. For the purposes of this statement, however, it believes that there are sufficient

grounds lo refer to the current procedure and the defendant's obstruction and delays in submitting an objection of bias. as primarily noted in this submission. Already an obvious purpose of the defendant is to obstruct until the decision is transferred to "their* courts.

98. The arbitration tribunal in its Resolution No. 25 of 26 September 2005 concluded that none of the members of the arbitration tribunel could be deemed to be biased in this arbitration in the sense argued by the defendant, in the submission of 14 September 2005, with detailed reasons. The arbitration is governed by the ZRft. Arbitrator bias can be assumed, for example, in the event of a direct or indirect interest in the outcome of the dispute. Legitimate doubts about the impartiality of the arbitrator may be justified, for example, by cunent and past contractual relations between the arbitrator and one of the parties, or if the arbitrator has acted as a consultant or lawyer or attended a meeting prior to the start of the dispute, if he has been in employment or in some other legal relationship with either party, etc. or has an interest in the outcome of the dispute. According to § 11 ZRli, an arbitrator is excl uded from any proceedings if circumstances of his bias subsequently come to light in the sense of § 8 ZRK. According to $ 12 paragraph ZRA an arbitrator Is obliged to give up the function of an arbitrator In such cirtumstances.

The objection of bias raised by the defendant in its submission of 14 September 2005 is vague. It is not clear whether it is directed against a specific arbitrator or against the entire arbitration tribunal. In the event that the objection of prejudice is directed against only one arbitrator, the remaining members of the arbitration tribunal could decide about his bias. If the objection of prejudice is directed against more than one arbitrators, then their bias can only be decided by a general court The defendant has failed to indicate what grounds it sees for bias of an arbitrator (the arbitrators), and merely stated that the grounds of the arbitration ruling raise some concerns. All members of the arbitration tribunal have reached, with regard to the above, the conclusion that they cannot be regarded as biased persons for the purposes of the arbitration. However, the parties have, in accordance with § 12 para 2 ZR&, the opportunity to agree on the procedure for exclusion of a particular arbitrator or arbitrators, under which each party has the right to file a petition for exclusion of an arbitrator or the arbitrators to the general court The defendant has not provided, nor claimed that it will submit, any document to the general court for the removal of an arbitrator oral! the arbitrators on grounds of bias according to § 12 2 ZR&.

99. JUDr Jiri Orsula, in the submission of 26 September 2005 (VI8), which was delivered to the arbitrators on 7 October 2005, himself responded to 13 questions, which in some way related to the alleged assignment of the claim to his person and his participation in the arbitration proceedings.

In the submission of 3 October 2005 (VI7) JUDr Jiri Orsula proposed to the arbitrators various possible procedures related to his alleged claim against the defendant. At the end of his submission, the arbitrator notes that the courts will determine compensation if he obtains a favourable ruling. In another submission dated 3 October 2005 (V19) JUDr Jiri Orsula tells the arbitrators that he will challenge the claim of the plaintiff that 16 January 2003 is the first recognition of the commitment on the part of the plaintiff.

In the electronic submission of 4 October 2005 (VI6) JUDr Jiri Orsula tells the arbitrators that they are guilty of illegal inaction, which consists in the fact that foe over two years they have not decided whether the plaintiff is the 100% creditor of the claim against the defendant, so that the tribunal has commiced a crime of fraud, by extracting from him remuneration of

230.000.00 CZK, and he rowsets a risk of extensive loss in connection with the possibility of forfeit of claims against the defendant

100. JUDr Petr Toman, in the submission of 5 October 2003 (A3), tells the arbitrators, in accordance with § 93 CPC that his client Ing Zdenek Casks is joining the arbitration proceedings as an intervening party on the side of the plaintiff, because as a creditor for part of the claim against the defendant he has a legal interest in the success of the plaintiff in the dispute. At the moment of the client's entering proceedings, he has the same rights and obligations of a party. JUDr Petr Toman at the same time asks for prompt communication of when and where it is possible to inspect the contents of the file, not later than 7 October 2005.

101. The arbitration tribunal, by resolution Mo. 26 of 8 October 2005, gave JUDr Jiri Orsula an additional period of 5 days to fulfill the obligations Laid down in paragraph I of the resolution of 28 June 2005 such that after any lapse of that deadline further demands of JUDr Jiri Orsula will not be discussed and he will be refunded the fees supplement paid by him.

102. JUDr Jiri Orsula, in the submission of 17 October 2003 (V20), refuses to comply with the resolution of the arbitrators of 8 October 2005 and insists on joining the proceedings at least to intervene and requests the arbitration tribunal, as soon as possible, to inform him of the decision on his application; be once again stresses his risk of loss as a result of the fact that he has bad no chance to consult the file.

103. The plaintiff, in the submission of 20 October 2005 (Y30), commented on the procedure of Ihe defendant in the proceedings. It stated that it considered it necessary to highlight the possible consequences of the out-of-court procedure of the defendant Czech Republic, as result of its attempt retroactively to exclude the ZRA from application to it This is a practice which is blatantly unconstitutional and as such the plaintiff will object to it in terms of the constitutional order and the law on Ihe Constitutional Court The state has become a patty that itself proposed the arbitration agreement and the delegation of power to an arbitrator to decide the matter, which has demonstrated die ruling of the court on the invalidity of the arbitration agreement and (hat its action has been finally decided. After the failure of this attempt, it is now attempting to exclude the effects of the some own legal action under the law on change so that this law pronounced the invalidity of any arbitration agreement ever concluded by the State.

The plaintiff proposes that Ihe arbitrators themselves should consider the constitutionality of the procedure and the defendant's own procedure and at the expense of the parties acquire certified copies of essential papers and documents submitted by the parties and deposit them in place of their own choice. The purpose of this proposal is to ensure the basic conditions for the continuation and resolution of these proceedings.

104. The defendant, in a submission dated 26, October 2005 (S34), commented on the submission by the plaintiff of 20 October 2005. In its view, the arguments of Uie plaintiff were very slanted and in principle not related to the defendant's actual conduct in the proceedings. It did not therefore consider it necessary to argue with them. The defendant emphatically rejects the final draft by the plaintiff, in particular the financial participation of the defendant in the costs of preparing certified copies of essential papers and documents in the file of this arbitration.

105. The arbitration tribunal, by Resolution No. 27 of 2 November 2005, instructed the parties to comment within the time limit on a specific submission of JUDr Jiri Orsula. By submission No. 28 of the same day lng Zdenck Caska was instructed to deliver certain documents within a specified period and the parties were ordered to discharge Che obligations imposed by the arbitrators. Ing Zdcnek Caska was also granted additional time to comply with section II of the resolurion of the arbitration tribunal of 8 April 2005.

106. The plaintiff, by the submission of 18 November 2005 (Y52), requested an extension of the deadline for comment according to the resolution of 2 November 2005.

107. The defendant, in the submission of 21 November 2005 (S35a), commented on the expert opinion. It said it is obvious that the action significantly goes beyond the powers of the arbitration tribunal, since the arbitration agreement limits the junsdicrion of the arbitration tribunal only to the settlement of damages allegedly caused in connection with a letter of MUDr Bojar to the Vice President of Novo Nordisk on 9 March 1992. The defendant refuses even to hint that it would at any time during this dispute before or after the action on its part be prepared to recognise any claim of the plaintiff delivered even If such a claim could be considered indisputable.

The defendant again raises objections to the content and method of processing of the expert opinion. In view of the above and in view of the reservations included in the Analysis developed in collaboration with Dcloitte Czech Republic BV, the defendant considers that until the clarification of the contradictions arising from the expert opinion it cannot be considered as evidence to confirm the soundness of the claim made, in terms of both basis and amount. The expert opinion has a number of substantive and methodological defects and irregularities in some places and is based only on hypothetical considerations. Without questioning expert and a complete and detailed list of the findings of his report, it is not possible in the opinion of the defendant in this case to take substantive decisions that will be sufficiently justified.

According to the defendant the plaintiff does not show any causal link between Itie letter of the Minister MUDr Bojar and the alleged loss. The facts on which the plaintiff bases its claim arc: a) the tender procedure, which it won, b) a prosecution against it for suspicion of illegal exports of drugs, c) deferment of the entry into effect of the results of the first tender d), the invitation to medical institutions to negotiate contracts with other companies than those determined by the defendant, e) a letter of former Health Minister MUDr Martin Bojar to Novo Nordisk, f) a fax message of Novo Nordisk to the plaintiff to suspend cooperation, g) records of a meeting of the representatives of both parties; h) expert opinion of JUDr R. Vokoun on the criminal legal classification of the Ministry of Health. The defendant does not deny that the letter of the Minister MUDr Bojar caused a reaction in the Danish company Novo Nordisk. The question is how (his reaction affected the plaintiffs position in the market, which has remained undocumented by the plaintiff.

The expert in the development of some sections of the Expert opinion referred to the expert opinion of Dr. Ing. Lunaka and lng. Kochanka and the Expert Institute Novota as submitted by the plaintiff, with some significant part of Expert's report being verbatim quotes from these reports. The basis for the development of the chapters by the defendant is essentially disputed, because these expert are not authorised to perform expert activities in certain fields, on which they comment in detail.

In the opinion of the defendant the extension of the action has a purely descriptive nature, without the plaintiff being able to prove the assertion of any proposed evidence or make very specific (and not hlankctj references to the claim, whose undisputed nature has been property established in accordance with the rules of these proceedings. The plaintiff is trying to create the impression as if the claim on which (he defendant relies for the extension of the amount has already been proven in the proceedings. So far, this has by no means been achieved. The plaintiff, in addition to damages, is claiming loss of profits in the form of requests and interest on late payment. Based on the expansion of objection dated 17 March 2005 it is claiming, among other things, arrears interest for the period to 30 September 2004 in the amount of CZK. 4,341,427,748.00. The plaintiff does not specify the date from which interest on late payments and does not specify how to reach this level, or what is its percentage rate. It docs not give the defendant or the arbitration tribunal any formula for calculating an amount of interest that would be rcviewable. The defendant and the arbitration tribunal thus can only speculate as to the amount of arrears interest claimed by the plaintiff.

With regard to the alleged conduct of the proceedings as this arse is somewhat atypical and therefore the reasons of this party impose caution on the defendant beyond the entry and the proposed next steps. In the current situation it thus seems quite necessary to hear the expert opinion of processors which could provide the detailed analysis and examination of the defendant's objections and which insists on their conclusions, particularly as regards the envisaged share of the plaintiff in (he market far blood plasma or derivatives in the Czech Republic in the period and the conclusions on the loss suffered. Any other suggestions or statements the defendant reserves the right to make at the request of the arbitration tribunal.

108. JUDx Petr Toman in the submission of 21 November 2003 (A4) asked the arbitration tribunal several questions regarding the procedural status of his client Ing Zdcnck Caska and said that his client has expressed willingness to conclude a new agreement with the arbitrators for their remuneration and on that basis to pay additional compensation, but only if he is or becomes a party to the arbitration.

109. The plaintiff, in the submission of 22 November 2005 (Y53), commented on the expert opinion and the comment of the defendant on the expert opinion. According to the plaintiff, the defendant is not considering the state of the proceedings and a substantial portion of its argument is irrelevant. Above all, it is disregarding the fuel that in ths case a decision has been taken on the basis of the claim, and thereby also the factual element of the derivation of the defendant's unlawful conduct In addition, for a substantial part of its opposition, the defendant is accepting the background for determining the amount of damages that it presented itself and that the plaintiff accepted as indisputable.

The defendant accuses the plaintiff and the expert of not having demonstrated how blood derivatives were registered at the time with the State Institute for Drug Control, although the plaintiff has never claimed that it was the holier of such registration, because it had to be the manufacturer which was registered, and the defendant itself presented the registration for pharmaceuticals of Novo Nordisk for the Expert as Annex 4/28. The defendant only refused after the expert opinion to recognise as undisputed and factually correct the procedural documents prepared by the Ministry of Health on market size, described by the defendant itself in the material ref FAR 151-4 of 3 May 2001 as a "basis for the expert witness." It even presented this document of the expert as Annex 4/17.

The plaintiff claims that the defendant provided false information to the Expert on the position of SEVAC in the market for blood derivatives, whereas the construction of this plant was commenced in 1996 and production of blood derivatives had not yet even been started. The plaintiff notes that the table presented by the expert as Annex 4/31 is clearly manipulated. Much of the data on some manufacturers is repeated three times, and manufacturers ore listed who did not have a licence to operate it in the market, products are listed which are ml relevant to the dispute, as well as those with poor levels of cleanliness or inactivation, and the statistics in lines 279-303 arc printed repeatedly.

At the end of its submission the plaintiff concluded that the the vast majority of the objections of the defendant to the expert opinion are irrelevant because they disregard the subject of inquiry. Its claims about the competitiveness of the oompany SEVAC at the time are refuted and the evidence which supports them is fabricated. The plaintiff docs not object to the supplement of the expert report and settlement of objections on both skies by a siyplemcnt to the expert opinion. However, it is unacceptable that the expert to present facts as doubtful when they derive from what the proceedings have already decided. It is unacceptable and procedurally irrelevant for the subject of evidence to be made from what the panics have identified as indisputable.

The plaintiff acknowledges that the defendant is claiming other unfair conduct towards it, but considers it unacceptable that, for these reasons, it is arguing with the final arbitration award against the expert opinion. The plaintiff regards it as at least premature to convene a hearing for questioning the expert

110. The arbitration tribunal, by resolution No. 29 of 28 November 2005, decided not to discuss the proposals of Ing Zdcrick Caska submitted in this arbitration, and gave appropriate grounds for its decision.

By resolution No. 30 of 29 November 2005 the arbitration tribunal instmeted the expert by the date of 20 January 2006 to comment on the comments of the parties on the expert opinion and at the same time supplement the expert opinion by an answer to question No. 9 and clearly indicate tire amount of lost profits.

111. The plaintiff, in the submission of 6 December 2005 (YS3), argued that JUDr Jiri Orsula cannot be a party to the subject of adjudication with regard to the arbitration agreement concluded, for any of the positions offered over the last year (group of parties, intervening party, procedural successor to the plaintiff). Intervention cannot be established against the will of the party intending to intervene. The plaintiff has already Indicated, and hereby docs so again, that it fundamentally disagrees with the entry of JUDr Jiri Orsula as an intervening party.

Similarly, the plaintiff disagrees with the entry of log Zdcnck Casks inn› the proceedings and proposes that the arbitration tribunal should issue a resolution, which decides that the entry of JUDr Jiri Orsula and Ing Zdcnck Caska as intervening panics is not allowed.

112. JUDr Jiri OrsuLa, in the submission of 21 December 2005 (V21), pressed for ■ decision, because the non-Lssuance of a decision by the arbitration tribunal within the tine limit set for itself, and notified to JUDr Jiri Orsula as a possible purchaser of part of the claim, could cause the ultimate failure of the transaction, which wtmld cause him a loss. He also says that the court has confirmed the definitive ruling, according to which the plaintiff is required him to pay him CZK 20,000.00.

113. The arbitration tribunal, by Resolution No. 31 of 30 December 2005, decided on 30 December 2005 to accept the participation in the arbitration of JUDr Jiri Orsula as a secondary parly to the plaintiff and that in the proceedings that party would hare the same rights and obligations as any other party. This only apply to him, however. The arbitration tribunal, unlike the plaintiff, maintains the legal opinion that in this case the conditions are met for application of the provisions of § 93 paragraph 1 and paragraph 2 CPC. The arbitration tribunal therefore accepted JUDr Jiri Orsula as a secondary party to the plaintiff because he had demonstrated that he liad an interest in the outcome of the dispute pending in the arbitration proceedings. Concerning the succession agreements between the plaintiff and the arbitration tribunal JUDr Jiri Orsula had already expressed his opinion earlier. Since they did not include the arbitration agreement, the arbitration tribunal is not emitted to consider them even as a preliminary issue.

114. The expert, in the submission of 13 January 2006 (X214), asked the arbitration tribunal for an extension of the deadline for comments on the comments of the parties at least until 20 February 2006.

115. The arbitration tribunal, by Resolution No. 32 of 18 January 2006, extended for the expert the deadline to submit comments in question until 2S February 2006.

116. The defendant, in the submission of 19 January 2006 (S36), commented on the resolution of the arbitrators requiring the expert to comment on the comments of the parties on the expert opinion and in response to question 9 to specify tlie amount of damages. It said that asking the question as the arbitration tribunal had done, namely as a demand to determine the exact amount of damages, was at least premature. It is another matter whether the plaintiff had ever submitted evidence whose existence would at least establish the relevance of the expert opinion. So it would be more appropriate to invite the plaintiff to supplement the missing evidence or convene a hearing at which the tribunal could determine that the facts could actually be regarded as proven and form the basis for further arguments.

117. The defendant, in its submission of 21 February 2006 (S37), said that already In its latest submission it had stated that, in the current situation and in the light of the major criticism (hat had been directed towards the content of the expert opinion, it was not possible to answer the questions raised by the arbitration tribunal. The defendant also expressed the belief that, in particular, the assessment by the expert of the potentially lost profit was speculation that could only apply if several conditions were met, or a number of factors demonstrated, which are mentioned In the expert opinion. Given the state of evidence and the fact that in a number of statements and documents there is an extreme contradiction with the truth, the conclusions of the expert on the amount of loss are premature.

The defendant considers that it is not possible to predict what position the arbitration tribunal will adopt in the case, especially alter the expert has been asked a supplementary question. The defendant, however, considers it certain that the principle of due process requires in the matter that sooner or later the procedural parties be given the opportunity to interview the authors of the expert opinion. With regard to this objection, and procedural economy, and subject to completion of the evidence after the submission of an addendum to the expert opinion, the defendant has already proposed some questions that it plans to ask the expert The submission includes 32 questions, which also contain additional sub-questions. Finally, the defendant stated that the submitted list of questions for the expert was only indicative, but that

without answers to them, taking account of the state of the proceedings, it would not be possible not to consider any specific amount.

118. The plaintiff in the submission of 27 February 2006 (Y57), commented on the defendant's submission of 21 February 2006. In its view, it was an obvious attempt to delay proceedings. The plaintiff was forced to reject the extent of evidence claimed by the defendant, in respect of matters that are no longer subject to the proceedings; and these are just questions of fact and, in particular, established by the parties, the arbitrators and expert precisely with regard to the decision on the basis of die claim in question. The plaintiff, exclusively for this phase of the proceedings, therefore cited another obvious attempt to delay,, repeated that the expert's report had been delivered for more than six months and took note of the deadline for comments of 22 November 2005. This period had expired more than three months ago.

The plaintiff argues that the defendant's objections to the expert opinion, which are similar to its procedural claim, have been repeated. In particular, however, they are not consistent with previous assertions by the defendant. A change of the fundamental assertion, however, is a procedural right of each party, but at a risk to their credibility and ultimately of failure in the dispute. The defendant, however, has changed its major claims without such a change being in any way demonstrated or proven, particularly in relation to the factual circumstances, which it previously itself described as indisputable. The plaintiff, in an effort to avoid delays in the proceedings, invites the defendant to note the essential facts already described in the proceedings as undisputed, in agreement with the plaintiff and indicate to the other side and the arbitrators what It regards as established at this stage of the proceedings.

With respect to the questions submined by the defendant the plaintiff assumed that supplementing the expert opinion could lead to hundreds of questions that are relevant. The vast majority of them, however, are legal issues, i.e. not belong to the subject of proceedings until a final decision on the base.

119. The expert, by a note dated 28 February 2006 (X226), requested a technical extension of the deadline for processing the reactions to the comments of the parlies on the expert opinion until 17 March 2006.

120. The arbitration tribunal, by resolution No. 33 of 3 March 2006, extended (he deadline for the expert for comments on the comments of the parties on the expert opinion to supplement the expert report until 17 March 2006.

121. The plaintiff, in (he submission of 13 March 2006 (Y5S), said that it considers it necessary to disclose to expert, the arbitrators and the other side, the information acquired on the occasion of the International Congress ofPlasnu Processors held in Prague on 7 to 8 March 2006. At that Congress, data were published that demonstrate the essential facts in dispute concerning the foundations of the expert examination and the substantial competitive advantage given to the plaintiffs competitors, lasting over (he relevant period. This is a quantity that the defendant regards as disputed in the proceedings, even though in the same proceedings with the consent of the plaintifT it presented it itself, essential for determining the amount of lost profits in this case: the yield of the relevant derivatives from one litre of blood plasma, the cost of manufacturing these derivatives with the same volume of raw materials and the price of one litre of plasma. It refutes the objections of the defendant against the assumptions of the expert opinion and confirms that similar data, presented in 2002 by the defendant in this case, are the minimum data the use of which means a lower value for the

amount of loss. Nevertheless, the plaintiff in this case continues to accept that. They confirm the crucial competitive advantage of the plaintiff for the duration of the relevant period. It disputes the claim that the plaintiffs competitors meet/fulfill the condition of participation in the Czech market and deliver all blood derivatives from the processing of exported Czech blood plasma.

The plaintiff notes that it is making this submission and adding to the evidence of its claims several days before the date on which the expert has submitted a supplement to the expert opinion. However, it is forced to adopt this procedure by the conduct of the other side. It also believes that the addition of evidence is sufficient to refute the objections of the defendant to the expert opinion, and from this **perspective** is timely.

122. On 16 March 2006 the expert submitted to the arbitrators the "Statement of the expert on the comments of the parties on expert opinion No. 23/124192/05 and the request of the arbitration tribunal to supplement the expert report with a dear assessment of the loss of profits" of 16 March 2006 (X237a).

123. The arbitration tribunal, by resolution No. 32 of 30 March 2006, gave the parties until 15 May 2006 to submit comments on the "Statement of (he expert on the comments of the parties on expert opinion No. 23/124192/05 and the request of the arbitration tribunal to supplement the expert report with a clear assessment of the amount of lost profits" of 16 March 2006, in which the expert on 102 pages gave his opinion on the comments of the parties on his expert opinion, as also the comments of the arbitration tribunal.

To clarify the answer to question 9 the expert noted that 1) on the basis of information that was available for preparing the expert report It was not possible to unambiguously decide on certain factual matters (in particular the existence and role cf SEVAC on the market) and therefore the response was provided in the form of variants; 2) even with the expenditure of considerable effort based on available evidence it was not possible to unambiguously determine whether the companies eligible to compete with die plaintiff had derided to enter the market already occupied by the plaintiff moreover this is an area in which the views of the parties are dearly diametrically opposed, and 3) the disagreements of the two parties with respect to the definition of the business of the plaintiffs in the Czech Republic are also fundamental; 4) finally, the answer of the experts is intended to be hypothetical, because the experts arc not aware of any methodology that would lead to exact, absolutely incontrovertible results in particular on the assessment of the share of the plaintiff in the primary market; S) the expert took the definition oflost profits from the specialist literature, but cannot determine that this definition and its interpretation by the expert will be fully accepted by the tribunal; 6) for the above reasons, especially the issue of the lost profit is subject to legal uncertainty; 7) the extent to which the experts answer can be used for the purpose of arbitration will, of course, depend on the tribunal's assessment of the expert opinion, but there are a number of considerations and assessments to be carried out in this context.

The expert believes that, for the above reasons, in the cuncnl situation the expert opinion cannot be supplemented as required by the tribunal. Any unambiguous determination of lost profits would, by its very nature, once again the merely hypothetical, and in view of the uncertainties outlined above; it would be necessary to make further assumptions, or authoritatively evaluate evidence and resolve legal issues, and in his opinion it is not for the expert to do this.

124. The defendant, to the submission of 9 May 2006 (S38), commented on the most recent statement of the expert. It stated that it is not clear what was the function of its statement in the proceedings. It is not art expert opinion, because its content is far from corresponding to the text of the statement. The question therefore is whether the statement would not be considered a relevant supplement to the expert opinion, if its content exceeds the evidential base. According to the defendant that is not the case.

With respect to the content of the expert opinion, the comment of the defendant and the statement the defendant regards at the current time as completely undeniable the impossibility of any determination of the amount of the damages claimed by the plaintiff, either by the parlies, the expert or authoritatively by the arbitrators. The conclusions of the expert contained in its statement can be succinctly authorised as the determination that any loss of profit, which is not just speculation, cannot be made, because basically nothing has been proved. From this it follows that the expert's opinion is essentially unusable foe the intended purpose and the current state of evidence does not permit the processing of the statement by the same or any other expert.

The defendant considers that die arbitration has already taken a very long time and there have been significant delays. If not always, at least since August last year, both parties have engaged in substantial procedural activity and have submitted their observations. The plaintiff has not yet adequately explained ail the relevant facts and presented the evidence in a suitable manner for a decision. in this regard we can speak of inactivity. We therefore propose that the tribunal orders the concentration of the proceedings pursuant to $ 118c paragraph 1 CPC and instructs the parties to indicate all the relevant facts about the merits and the evidence to prove them within a specified period and that later mentioned facts and evidence will not be able to be taken into account as statutory exceptions. Far the further proceedings we consider a decision of the arbitration tribunal in favour of concentration to be appropriate with respect to the principle of expedition of the proceedings.

Given the current situation the defendant does not insist on hearing of expert and leaves the decision to the arbitrators. Finally, it points to the very vague and unpredictable evidential situation. An expert opinion has been given, the result of which does not clarify the situation by answering technical questions, but finds that the assessment process lacks the relevant documentation. Assessed in terms of current judicial practice, these proceedings should therefore be returned to the earlier procedural phase. This is very unusual, however, and therefore we request the arbitration tribunal to instruct us on farther consideration of the proceedings so that we can fully participate in them.

125. The plaintiff, in the submission of 15 May 2006 (Y59), commented on the supplementary evidence, on the addition to the opinion and on the evidence in dispute. This submission is accompanied with documentary evidence and summonses the plaintiffs claims, especially about the nature of the market for blood plasma and its evolution in the Czech Republic and the share of (he plaintiff in that process. It demonstrates that the plaintiff consistently had a fundamental leadership in the Czech market for blood plasma and also that the market was built around its critical participation and on the basis of it. It demonstrates that it unlawful exclusion from the market affected 100% of the market for blood plasma.

The plaintiff considers that (he factual assertions to justify the claim and the evidence presented have been adequately demonstrated. This is despite the illegal barriers which the defendant has placed with the burden of proof on the plaintiff. A special feature of the evidence

in this matter is that the other party to the dispute is the state, which is involving in the dispute not only its organisational structure, but also its other components, including, the law enforcement authorities. According to the plaintiff, the defendant is frustrating the collection of evidence in the proceedings with demonstrated efforts to influence unduly burden the initiative with public and criminal proceedings, although this involves the constitutionally protected sphere of autonomous adversarial dispute, and it can provide evidence for the abuse of powers available to them for public performance of state functions and not for their support in a private dispute, through the practice of both law enforcement and investigative committees of Parliament, with public statements of the representatives of its executive power, in order to try to influence the independent expert's conclusions and decisions in the arbitration.

Assuming the truth of the opinion of the plaintiff on the evidential situation, however, the expert opinion could be the basis for a substantive decision. The plaintiff is demonstrating the evidence for its claims, and therefore concludes that the relevant facts to support its claim have been proven and that the expert opinion, evaluated in relation to that evidence, can fcim the basis for that decision. Depending on the decision of the arbitration tribunal an the further procedural process, the plaintiff reserves the right to extend the application for a supplement to the expert opinion of the Expert Institute Novota as. and requests the arbitration tribunal to admit such a proposal.

126. On 22 May 2006 the presiding arbitrator received a request of the District Court for Prague 2 of 17 July 2006, case no. 7 T 28/2006 (X256j, to inform the court of the lawyers who are acting before the arbitration tribunal in this matter and on which side.

127. The plaintiff, in the submission of 17 May 2006 (Y60), commented on the resolution of the arbitrators of 30 December 2005 to admit JUDr Jiri Ursula to intervene in these proceedings. It said that JUDr Jiri Orsula could not intervene because of the inadequacy of the use of this institution in this arbitration, the lack of content of the main interveners to the intervention an his side of the dispute, and that this fact alone precludes his intervention and demonstrates the inconsistency of his Interests and the interests of the main intervene and (he attempts of the arbitrators appointed to act against the interest of a procedural side, which is represented in the proceedings. It is therefore proposed that the arbitrator should issue a resolution that intervention of JUDr Tin Orsula is not accepted by the plaintiff.

128. The arbitration tribunal, by resolution No. 35 of 29 May 2006, instructed the parties to comment within the prescribed period on all the documentary evidence that the arbitrators had so far acquired. In the event that the parties intend to submit to the arbitration tribunal further documentary evidence, it should be submitted within the same period. Tbe defendant, in the submission of 9 May 2006, had proposed that the arbitration tribunal should decide on the concentration of proceedings pursuant to § 118c paragraph 1 CPC. The arbitration tribunal in this case has already provided several justifications for its resolution as regards the use of Civil Procedure in arbitration, since the provisions of § 30 ZRft stipulate tbe appropriate use of Civil Procedure, unless the use is subsidiary. The ZRft does not admit award by default, bill payment for an arbitration award, renewal of arbitration or concentration of arbitration.

The parties in the arbitration agreement have agreed to resolve the dispute without a hearing only on the basts of documents. The arbitration tribunal in the current stage of the dispute does not consider It useful or necessary to order a bearing, even for questioning the expert, as proposed in previous submissions of the defendant, and lias not yet accepted such a

proposal. Parties in arbitration are required to prove all allegations regarding their claims and objections to the claims lodged.

The arbitration tribunal, by resolution No. 36 of 29 May 2006, gave the defendants and JUDr Jiri Orsula a deadline to comment to the plaintiffs submission of 17 May 2006 and the submission of any procedural proposals.

The arbitration tribunal at its meeting held on 29 May 2006 noted the request of the District Court for Prague 2 for information about the lawyers engaged in this dispute and asked the presiding arbitrator to prepare a negative answer to this court pursuant to § 6 ZRft,

The presiding arbitrator by an undated letter, sent on 31 May 2006 (X264), told the District Court for Prague 2 that, because of confidentiality under § 6 ZRA, the court cannot convey the desired information.

129. The plaintiff, by the submission of 24 May 2006 (Y61), told the arbitrators that confidentiality dues not cover a query from the District Coirt for Prague 2 about who are the lawyers in the arbitration proceedings and on which side. The plaintiff does not consider it justified to ask the court for an explanation of the necessary information required by the presiding arbitrator. It agrees, however, the court's presentation of this opinion, and only to that extent exempts the arbitrator from his statutory duty of confidentiality.

130. The defendant, by a submission of 31 May 2005 (S39), indicated its readiness to comment on the plaintiffs allegations, but would welcome communication of the further assessment procedure of the arbitration tribunal This position was also indicated by die defendant in connection with the fact that the plaintiff was continuing its efforts to influence public opinion outside the arbitration through press conferences and issuing press releases. The defendant asks the arbitration tribunal to request the plaintifT to refrain from such a procedure, since their legal arguments and the documents on which its claim is based should be present mainly In the arbitration, so that the defendant can adequately express its comments.

131. The defendant, in the submission of 29 lime 2006 (S4QaX said that the resolution of the arbitrators of 29 May 2006 was not a challenge to the final proposal, but only a challenge to indicate its current procedural opinion. The right to comment during the entire procedure, on the evidence and the factual and legal aspects of the case, would be reserved by the defendant until the final application.

Without the defendant commencing the evaluation of certain forms of conduct of the plaintiff, it only remarks on certain complications from the somewhat inconsistent procedure of the plaintiff, which deals with some of its reservations, but disregards others. This attitude of the plaintiff could in principle be interpreted to mean that, if some reservations are explicitly rejected, then they can be satisfied and it will be possible for the final draft to submit a summary of such unchallenged assertions. It will then be for the arbitration tribunal to assess the persuasiveness of the arguments and objections in the relevant context.

It would, in connection with the very confusing and unclear evidential situation of the dispute, which was still further underlined by the clear statement of the inability of expert to conclude whether the plaintiff had sustained a loss through the absence of relevant facts, be appropriate now for the tribunal to inform the participaots what further procedures will be chosen. In the current situation, it is not clear whether any of Che plaintiffs allegations can be

deemed proven, will determine which party bears the burden of proof and in the sarnie way assess the challenges of the plaintiff.

The defendant is still convinced that the plaintiff has failed to submit evidence with which il could argue. The arbitration tribunal should ask the defendant according to the plaintiff to submit in its own interest all the documentary evidence needed to prove the claim, set the appropriate deadline and alter its expiration, if no explicit documentary or other evidence has been presented or designed, take a decision in the case that the application must be refused.

132. JUDr JLri Orsula, by a submission of 29 June 2006 (V24), asked for an extension of the deadline for submitting comments on the defendant of 9 May 2006 and the plaintiff of 17 May 2006 to report on judicial proceedings related to the arbitration submission and its procedural proposals. In this **submission** he submitted **his** observations on the announced questions and proposed that the arbitration tribunal should dismiss the proposal of the plaintiff for the termination of his intervention and, in respect of the suspension of proceedings in respect of that part which concerns 30% of the claim, set a deadline for receipt of final proposals and sent the parties further procedural guidelines.

133. The plaintiff, in the submission of 3 July 2006 (Y62A), summarises the extent of evidence in the proceedings, comments on the evidence submitted by both parties, submits additional evidence to support its claims and comments on the evidential procedure of the parties. With regard to the issue of an interim arbitration award, the only subject of proof is the amount of damages. The evidence presented by the plaintiff suggests that the evidence is sufficient to decide the case. It proposes that the parties should be invited to comment an the evidence presented. If the defendant still does act accept the evidence of the plaintiff it should provide clear evidence for its substantive allegations and the plaintiff shall bear its own burden of evidential restraint. This procedure of the **defendant** cannot be an obstacle to the substantive decision. The plaintiff expresses the opinion that the basic facts justifying the decision on the amount of damages in these proceedings have been demonstrated. It proposes that the arbitrator should invite the parties to summarise the evidential proceedings and formulate final proposals.

134. The plaintiff, by the submission of 24 July 2006 (Y63), tells the arbitration tribunal that it is taking into account the comments by the defendant and notes its proposal that the parties should be invited to submit a final proposal. The plaintiff will within two weeks submit its observations on the state of evidence and present additional evidence.

135. The arbitration tribunal at its meeting held on 31 July 2006 stated that in its present composition it has repeatedly found that at the present stage of the arbitration proceedings it should decide the evidence and determine the amount of claims raised by the plaintiff, because the claims raised have already been decided in respect of grounds by an interim award, which is binding on the arbitration tribunal and which will be the basis for deciding the amount of the claims made. The decision of the arbitration tribunal in this case should be predictable (cf. the decision of the Constitutional Court II. U.S. 107/04 or III. U.S. 377/01). Given the above, the arbitration tribunal in the arbitration award will ultimately decide on the quantification of the claim.

According to the arbitration tribunal, the plaintiff has sufficiently demonstrated the amount of claims made. To prevent any father delay that has occurred already in the proceedings and has delayed the final decision in the matter, the arbitration tribunal should decide based on the

proposals of parties to us* the previous submission under the provisions of § 30 ZRA in conjunction with $ 11, paragraph B CPC 3, and therefore issue on 31 July 2006 Resolution No. 37, by which the parties have a deadline until the end of August 2006 to submit any outstanding evidence to prove all their claims In this case on the basis that the evidence delivered later will not be submitted to the arbitration, and the parties were also granted a further period until the end of September to comment on (he proposed evidence of the counterparty and the submission of the final proposal.

The arbitrators assumed that the delivery of the final proposals will resolve the dispute and that they will proceed to the preparation of the final arbitration award. They assumed that, if there were no unforeseen events, the final arbitration award could be issued by the end of 2006.

136. The plaintiff by the submission of 3 August 2006 (Y64), informs the arbitrators that on this day the District Court for Prague 2 has dismissed the action of fUDr Jiri Orsula against Diag Human, as. and attaches a copy of the minutes of the oral hearing. These are the proceedings under Ref 23 C 53/2004 on the determination that JlTDr Jiri Orsula is a creditor of the plaintiff for the alleged claims. The sentence was announced on the intervention of JUDr Jiri Orsula, but has not yet acquired legal force.

137. The defendant, by a submission of 30 August 2006 (S41), presented a proposal to the arbitration tribunal to supplement the evidence. It relates to the consolidated profit and loss accounts of the companies active in the relevant period in the market for processing blood plasma. The defendant was seeking to establish that the data and values included in the calculation of the Expert Institute Novota as of 30 June 2006 do not even approximately resemble normal values For the processing of blood plasma Finally, the defendant indicates that it will not propose any further evidence. On all the evidence submitted by the plaintiff, including during the proceedings, il will comment in its final proposal.

138. The plaintiff with the submission of 31 A ugust 2006 (Y65a) refers to the previous resolution of the arbitrators on the evidence in dispute and the submission of evidence and made a proposal to submit some evidence to the general court On the range of evidence the plaintiff stated that (he arbitrator bos commented on this subject to proceedings and established that il is only the amount of damagrs that is the subject of these proceedings end this is welcome with regard to the extensiveness of the evidence as well as to the facts of the dispute, which have already been definitively resolved. According to the plaintiff, the basic values for determining the amount of damages have been established by the patties, and they can also be easily verified from other sources, both those available to the defendant on its own and from other sources indicated by the plaintiff in the present proceedings.

The plaimiff proposed that the expert should be instructed to supplement the expert opinion's assessment of dala and evidence that the parties submitted after expert issued his expert opinion, or its addendum, data and evidence, on the factual soundness of which the expert declined to comment, though both derive from publicly available official sources, or which it is authorised to request the parties to provide from many sources; the plaintiffs allegations, also quantified and described in the supplement to the NOVOTA report, presented in the proceedings with the submission of 15 May 2006 and the expert scientific opinion of the same institute, presented as a supplement to this submission, claim I on the amount of profit of the relevant competitors at the time, 2 expert opinion about the correctness of the position of the defendant in addendum A. on the level of profit in fire industry. In addition, the plaintiff

proposed that the submission of tbe specified evidence should be carried out in conjunction with the general court pursuant to § 20 paragraph 2 ZRA.

139. The arbitration tribunal on the basis of submissions by the parties and their proposals concluded that it could not stop the evidential process, and therefore issued on 19 September 2006 Resolution No. 38:

*(3) /. The expert is instructed to supplement expert opinion no. 23/12414192/05 dated / / 82005 within a period of three months from the dote ofreceipt of the report, by assessing the

- Data and evidence that the parties submitted to the arbitration tribunal, after the expert report was filed or tts addendum;
- Data and evidence, on the factual soundness of which the expert declined to comment although it is apparent both from publicly available official sources or sources provided by agreement with any of the parties;
- The claim of the plaintiff also quantified and described in the addendum to the NOVOTA expert opinion, presented In the proceedings of 15.5.2006 and in the NOVOTA expert opinion as presented in the addendum to this submission the amount of claim 1 of the profit level of the competitors at the time, 2 expert opinion about the correctness of the defendant In addendum A. on the rate of profit in the industry;
- Based on the expert assessment the expert should supplement the answers to individual questions of the expert opinion as set by the arbitrators on 9.9 2004, especially question No. 9

2. The parties ore hereby instructed within 15 days of receipt of this resolution, to give the expert all their submissions and documentary evidence, as submitted to the arbitration tribunal after the dote of receipt of the above expert opinion by the arbitration tribunal.

3. The parties are reminded of the obligation to provide necessary assistance to the expert, set out in section fV of the resolution of the arbitrators of 9 9 2004.

(4) The defendant is required to submit copies to all the arbitrators, other parties to the arbitration and the expert within 15 days of receipt of this resolution of the following documentary evidence:

/. Data from the state final account for 1990, 1991 and 1992, and a summary of the investment costs of medical devices - managed by the Ministry of Health and district authorities, spent in the years from ! 990 to 1992 for the purchase of technology equipment for production, storoge and transportation of blood plasma

2 The decision to permit foreign commercial activity, a certificate of legal subjectivity in the sense of Czech law, tax returns made by Czech legal entities, representing both competitors for the years 1990 - 1992, the Czech licence to process blood plasma (Masterfilt) and permission for export of drugs, especially in 1990 - 1992 and up to the end of the relevant period for the companies Instituto Grifols and Immune Wien.

J. *A comment on the volume of blood plasma and blood derivatives, brought under a contractual obligation (Article 6 of the Grifols contract) of the competitors of the plaintifffrom 1990 and for the whole relevant period Over the same period a decision on the registration of Factor VIH, immunoglobulin and human albumin of NovoNordisk, HemaSure, Insistuto Grifols and Immuno Wien.*

4. Materials for the meetings of the government of the Czech Republic, mainly from the years 2000 - 2001, in respect of the government meetings on the dispute by the defendant with the plaintiff, including explanatory memoranda.

5. Statistics of imports of all blood products during 1992 - 2000, separately for Czech plasma and other plasma.

(S) J. The defendant is required within IS days of receipt to submit to the presiding arbitrator the originals of the following documentary evidence:

A) Commercial records and correspondence of Conneco, NovoNordisk and Diag Human, submitted and noI returned from the dosed investigation flit of the Czech Police In 1993 and 1994.

B) Requests for cancellations of NovoNordisk products on the basis of which which the defendant stated that in February NovoNordisk products underwent deregistration In the Czech Republic.

C) The statement of the Police of the Czech Republic that they have recently closed an investigation Into allegations (Police of the Czech Republic, the Unit for Combating Corruption and Financial Crime Proceedings Department, detection and documentation of corruption and financial crime detection and documentation of the department of corruption and financial crime, 170 89 Prague 7, 27 Strojnlckd . CTS: OKFK - 58/8-1-2004).

D) The original production documentation, including certificates of good manufacturing practice, the results of quality control and commercial documents, showing the sale of the blood derivatives SEVACAÏSOL and SEVAC Bohumlla

2. Aficr submission of the documentary evidence set out In point J of this resolution, the arbitration tribunal shall decide on the method of proof of these documents."

140. The defendant, by a submission of 6 October 2006 ($42), responded to the resolution of the arbitration tribunal of 19 September 2006 and submitted the specified documents. It indicated that some requirements were not specific and some could not be met at all. Despite all the reservations about the content of the resolution which the defendant raised, it had attempted to the greatest extent possible to comply with the request contained in it and some of the required documentation had been submitted.

In this context, the defendant repeatedly and strongly points to the fact that die burden of proof in this case weighs heavily on the plaintiff. The sane applies to the assertion of its obligations and the requirement that any evidence of its proposals, not only in purely procedural terms but also in respect of content, should be sufficiently clearly formulated and that these proposals will be accepted by the arbitrator only if they am suitable to prove facts relevant to this dispute.

141. The plaintiff, by the submission of 23 October 2006 (Y66), informed the arbitrator of international merges of the plaintiff, addressed the resolution of the arbitrators of 19 September 2006 to define the scope of the proceeding and on the key factual issues that are disputed in the proceedings and addendum No. 2 to the submission of the defendant (reporting on the volume of exported and supplied plasma products). It reported that with respect to the international merger D1AO HUMAN as ID: 00408611, registered Bedtyni, Lock I, Tabor District, ZIP 391 65, on the date of registration of the merger, i.e. 29 August 2006, was transformed from being a Czech Company into being the European company DIAO HUMAN SE based in the Principality of Liechtenstein CFL), Hciligkreuz 6.9490 Vaduz with the current location of the headquarters of the company formed in this way being in the Principality of Liechtenstein, i.e. outside the current headquarters of the two merging companies, such that Dtag Human SE lost through the merger and registration in the FL commercial register its Czech Czech nationality and personal status, which had been admitted Czech law, without cessation of DlAG HUMAN or loss of its legal continuity. The effects of the merger include the fact that the company DlAG HUMAN SE still holds all the rights and obligations of DIAG HUMAN as, i.e. the position of creditor for the claims which are the subject of the arbitration proceedings, os well as being the authorised legal representative in these proceedings.

The plaintiff takes note of the obligations laid down by order of the arbitrators of 19 September 2006. The plaintiff claims that ail the assertions of the defendant regarding the existence of a causal connection between its actions and the hurmfol result as also the length of any such causal connection are irrelevant This assertion cannot be the subject of demonstration. In addition the plaintiff comments on the arguments and factual allegations contained in the defendant's submission that it was delivered on 3 July 2006. According to the plaintiff the defendant's attached report on the volume of plasma processed and imported products finally and fully confirmed the plaintiffs procedural allegations about its competitive advantage over all competitors in terms of a significantly lower cost to the defendant's medical facilities, or the defendant's expenditure on a national need for blood derivatives in cooperation with the plaintiff, throughout the relevant period and for significantly higher profits than the competitors made in the decisive period before the plaintiffs lost profits.

142. The plaintiff, in a submission of 3 November 2006 (Y67), commented on the written evidence submitted by the defendant from which it follows that the competitors had permission to distribute drugs, subject to the condition of receiving a certificate of good manufacturing practice. It also commented on Ihe state submission on the defendants competitors, which both fulfilled the basic conditions for transactions in the distribution of drugs, but whose satisfaction of them was false. The exercise of controlling powers against them by the defendant suggests that the defendant not only accessed in an extremely benevolent manner, but was directly involved in the falsification of the basic conditions of competitors, which lay within its proven competence.

The conclusions are drawn by the plaintiff to support its allegations of systematic support of the defcndant'9 unfair actions, addressed to the competitors, to illustrate the connection of the relevant harmful actions and also as a basis for assessing the credibility of the defendants position as the claim is filed in these proceedings. In addition to the conclusions drawn from the submitted administrative decisions, it repeats the proposal of the expert that the defendant should be required to submit records of the control of GMP competitors (or the plaintiff).

143. The plaintiff, by the submission of 20 November 2006 (Y6J), submitted a proposal for further action by the expert. The plaintiff considers h useful for the expert to consult with the parties, with • request for clarification, or proof of disputed facts or conflicting claims. The meeting should be attended by expert advisers of both parties.

144. The plaintiff, in the submission of 1 December 2006 (Y69a), commented primarily on the information of the defendant about the amount of blood plasma for processing. In addition, the plaintiff argued that:

1. It makes its procedural claims about the quantity of blood plasma in the period from the statistics reported by the defendant and these have teen demonstrated.

2. There is evidence that a substantial number of products manufactured from Czech plasma were imported into the Czech Republic. This refutes the opposite argument of the defendant.

3. The yield of competitora/Intermcdiarics from the sale of products manufactured from Czech plasma is greater than the sum of prices of products Imported to the Czech Republic, the difference in these values represents the value of products manufactured from Czech plasma and sold in other markets.

4. The Czech competitor DSOI/SEVAC, or SEVAC Bohumila was not at the relevant time the plaintiffs competitor in terms of the relevant products, or was not a manufacturer at all.

5. Only two preferred competitors of the plaintiff would have been able at the time to meet the Czech national requirement fox all relevant blood products, but they supplied only about half this quantity.

6. Even the production of competitors, which was returned cn account by the fractionation contract terms, does not exhaust their share of the secondary market, and the rest of the share of supply has no ties to the terms of fractionalera contract on commercial terms.

7. The plaintiff could have achieved by selling products on the Czech market and other markets comparable income with the competitors, but at substantially lower costs to ensure the Czech national requirement, than the defendant has expended for the same purpose in cooperation with competitors. This indicates a decisive competitive advantage.

ft. The competitors approved by the defendant were not authorised to distribute blood derivatives until 1994, or 1995, because they did not meet the legal requirements for such participation. For this part of the qualifying period they are not competitors of the plaintiff and their actual participation in the primary and secondary market is illegal. Dtstnbution of products was a condition of the defendant for participation by competitors in the primary market, their participation b this market being impossible without the possibility of distributing products.

9. This proved an intentional context of unfair conduct by the defendant for the benefit of those competitors and against the position of the plaintiff in the market as well as falsification of the statutory conditions on its part in terms of the license to distribute drugs.

10. This demonstrated significant failings of the defendant in the exercise of state submission in the field, in the exercise of administrative responsibilities, both certification, decision-making, and statistical. The same applies to its procedural claims.

145. The defendant, by • submission of 6 December 2006 (S43), commented on the submission of the plaintiff of 23 October 2006. In its view, a final decision had not yet been taken on the duration of the causal connection between the unlawful actions of the defendant and the alleged loss. And this also means that the very existence of a causal relation, including its duration, is necessary in this case to continue to explore in relation to the scope of the alleged loss. There is no doubt that the burden of proof and argument in this direction lay and Lies with the plaintiff.

The defendant repeated that the previous decisions are no doubt binding, but the factual or legal conclusions upon which those decisions are based, do not constitute the conclusion that the plaintiff as a result of misconduct by the defendant sustained a loss in the amount of CZK 326 million. Despite the arguments of the plaintiff it is not clear what follows from its legal opinion that the facts set out in the arbitration findings would be binding on the parties in the further course of the proceedings for determining the allegedly incurred damages. The claims of the defendant that it is reasonable to **question** the existence of a causal connection of the actions with the harmful consequences are irrelevant, and inlaw these claims must be subject to evidence in the course of these proceedings.

The remainder of the defendants submission responds to the submissions by the plaintiff of 31 August 2006, 23 October 2006 and 3 December 2006, but is essentially a factual recapitulation of the main contentious issues that remain open: the causes of failure to achieve profits of the plaintiff, the relevant market in terms of the subject of the proceedings, the market position of the plaintiffs claims at the time of the alleged incident, the role of the plaintiff in transactions initiated by Diag Human AG, options and interest in Novo Nordisk in the processing of Czech blood plasma, the alleged violation of contractual obligations by Immune and Grifols and previous calculations of the allegedly lost profits.

Finally, the defendant argues that the plaintiffs statements repeatedly and clearly demonstrate its current procedural approach in these proceedings, which is particularly in its final stages only limited to the submission of dairas and evidence that by the way do not prove the amount of damages allegedly caused, often including **a** number of irrelevant alleged facts, through which the plaintiff impermissibly expands the subject of the arbitration proceedings, which is strictly defined by the contract.

146. The expert, by a note dated 19 December 2006 marked as "Comment of expert on Resolution No. 3 of the arbitration tribunal, 19.9 2006" (X292), informed the arbitrators of the reasons for which the given state of affairs cannot lead to an amendment to the expert opinion.

147. The artritration tribunal, by resolution No. 39 of 28 December 2006 based on the plaintiffs submission of 23 October 2006 and submitted documents, ruled that the plaintiff must in the further course of these proceedings be referred to as: DIAG HUMAN SE, headquartered in Vaduz, Hciligkrcuz 6, 9490 Vaduz, Liechtenstein. It also gave the parties a deadline to 22 January 2007 to comment an the issues contained in the expert's "Statement on Resolution No. 3 of the arbitration tribunal, 19.9 2006".

148. JUDr Petr Toman, by • submission of 18 January 2007 (AS), made an application to the arbitrators for the main intervention under § 91a CPC and demanded the appointment as his legal representative of Ing Zdenek Casks for the specified award.

149. The plaintiff, by the submission of 19 January 2007 (Y70), commented on the submission of the expert, containing notice of the inability of the expert to make an amendment. In addition, the plaintiff repeats the request for evidence from the police file conducted by the Police of the Czech Republic. The subject of criminal proceedings included the conduct of the parties in the course of the proceedings and the truthfulness of the factual allegations. Regardless of the absurdity of such criminal proceedings, however, it was clear that the defendant police after three years had been able ID verify the veracity of the parties' claims. Judging from the public statements by the Representative General, the aiminal proceedings were suspended and the resolution to that effect had entered into force.

150. The defendant, in the submission of 22 January 2007 (S44), said that the procedure chosen by the expert, i.e. to asset the questions of the arbitrators, is very atypical in the procedural aspect and in terms of the CPC and basically unacceptable. The procedure should in fact be the opposite, i.e. the arbitrators should ask the expert to clarify disputed issues of a specialist character. Such a procedure may de facto lead to the fact that the arbitrators comment on the cose and then determine the factual and legal conclusions before the evidential process is completed. According to the defendant it is in fact the only possible next step in this procedure to require the parties to submit final proposals. The reason is that since 31 July 2006, when the parties communicated the opinion of the arbitrators on the question above proven damages, the plaintiff has failed to provide any other relevant evidence. This fact dearly demonstrates the attitude of the expert, which is contained in its statement of 19 December 2006.

151. The arbitration tribunal, by resolution No. 41 of 17 February 2007, decided that l. The authorisation of the arbitrators to hear the "Actions - main intervention under § 91a of the Civil Procedure Code dated January 18, 2007*, fried by lng Zdenek Casks, resident at JirinkovA 1138, 160 00 Prague 6, has not been issued. 2. Ing Zdenek Casks's proposal to suspend part of this arbitration is denied. 3. Ing Zdenek Caska will be given by his lawyer three originals of the application. The originals were released to JUDr Petr Toman by a registered letter dated 22 February 20C7 (X306).

By Resolution No. 40 of the same day, the expert extended the deadline for completion of the expert opinion according to the order of the arbitrators of 19 September 2007 to 31 March 2008.

152. The defendant, in the submission of 13 March 2007 (S45), commented on the resolution of the arbitration tribunal of 17 February 2007, which it accepted with some comments.

153. The plaintiff, by the submission of 28 March 2007 (Y72), told the arbitrators that the expert had been asked to collaborate, including with the participation of the plaintiff, b the discussion of the parties with the expert, and that he was prepared to cooperate.

154. The expert, by a note dated 29 March 2007 (X312), asked the arbitrator to extend the deadline for drafting an amendment to the expert opinion by at least 6 weeks, i.e. to 14 May 2007, because he was waiting for the necessary cooperation of the parties.

155. The arbitration tribunal, by resolution No. 42 of the expert of 4 April 2007, extended on the request of 29 March 2007 deadline for drafting the addendum to the Expert opinion until 14 May 2007, so that it should no longer be extended and referred to the previously imposed duty of the expert to provide the necessary assistance.

156. The plaintiff, with the submission of 16 April 2007 (Y73A), commented on the 22 questions that were asked by the expert, and attached to the submission the specified documents,

157. The defendant, by a submission of 18 April 2007 (S46), expressed disagreement with the activities of expert in the last period, especially his attempt to convene a meeting of the parties. Such meetings would not be attended by the defendant because it is considering the foreign law and and they certainly involve a violation of the principle of fair proceedings.

158. The plaintiff, by the submission of 20 April 2007 (Y74), reported nn the arrangements for collaboration with the expert, especially answering his questions.

159. The plaintiff, with the submission of 24 April 2007 (Y75), commented on the position of the defendants and its threats against the expert for the announced procedure, which is entirely in keeping with Czech law and also in terms of the expert remit, as formulated by the arbitrators. The plaintiff states that the defendant refused to provide assistance to the expert and the threat is intended to prevent the expert cooperating with the other side of the dispute, the plaintiff.

160. The plaintiff, by the submission of 3 May 2007 (Y76A), submitted to the arbitrators additional documentary evidence and stated that it preferred documents that are signed by responsible persons, bearing the official stamp or document in which the authenticity derives from the accompanying letter, and asks the defendant for an opinion on the submitted documents. These documents should be forwarded to the expert and the defendant at a joint meeting and an explanation should be given, if needed by the expert.

161. The defendant, by a submission of 3 May 2007 (S47), commented on the criticisms regarding the plaintiffs position on the initiatives of the expert. The defendant considers that the expert is substantially exceeding his authority and the expert should not act in this fashion under any circumstances in civil proceedings. In its view, the plaintiff disputed the amount, which is relative, meaning very high in terms of the eormai amounts claimed. In terms of the funds available to the stats, this is not the case. The plaintiff argued On the basis of arguments that the defendant docs not accept, but that was the extent of the provisional criticism. This was a fairly common situation in civil proceedings and in respect of die specific entities in the state involved in this dispute, so that, from their perspective, (hoe is reason to resolve the matter by other means.

The defendant notes that the statement by the plaintiff cn the procedural and evidentiary situation has not changed anything. That part of the plaintiffs submission which is a response to some alleged intimidation by the defendant is unreasonable and the evidence on die merits is completely irrelevant. Where the plaintiff presents documents as evidence, It is clear that the probative value of these documents, if any, is highly problematic and ambiguous. Moreover, the contents of those documents definitely does not prove whet the plaintiff is saying, i.e. its interpretation is inadequate and misleading.

162. The plaintiff, by Hit submission of 4 May 2007 (Y77), supplemented its statement of 24 April 2007 on the procedure of the defendant and stated that in this case this is the second time when the defendant, the Czech Republic, is trying to achieve the suppression of expert evidence on the amount of loss. Despite its claim to the contrary it has been shown that the opinion of the experts Dr. Ing. Lunaka and Ing. Kochania was commissioned by it and provided for the purpose of drafting documents, which was an argument against the threat of criminal prosecution of the arbitrators, if proof of their opinion is executed. The plaintifT asks the expert to continue his mission, voices the assumption that despite obstruction by the defendant the established deadline will be adhered to and again expresses readiness for any cooperation.

163. The defendant, by a submission of 10 May 2007 (S48), requests the arbitration tribunal to rectify the procedural order and that the evidence adduced by the plaintiff after 31 August 2006 should be disregarded. At the same time the defendant objects to the misrepresentation of its position on the initiatives of the expert and emphasises that by (he refusal to attend scheduled appointments it has decisively rejected the provision of the necessary assistance to the expert and has also not put any pressure on the expert, as the plaintiff claims, to refuse cooperation with the plaintiff.

164. The plaintiff, by the submission of 15 May 2007 (Y7$), commented or the challenge of the the expert, accompanied by other written evidence, and on previous statements by the defendant.

165. The expert, on 17 May 2007, submitted to the arbitrators "Additional answers to individual questions of the expert opinion pursuant to Resolution No. 3 of the arbitration tribunal of 19.9.2006" dated 16 May 2007 (X326A). In response to question 9, the expert, depending on the set of assumptions, offered for different variants fur the volume of plasma fractionation and the amount of the compensation for loss of earnings.

"Variant LA. The assertion of the plaintiff in its reply to question No. I £r considered to be proven by the expert based on the volume of plasma for fractionation. The amount of fractionation compensation set out in addendum of Novota as and verified by Ur. Robert is considered proven, and therefore the expert is relying on the figures set out in addendum Novota as" - the total amount of lost profit is CZK J,770,781,000.00.

**Variant I.B. The assertion of the plaint ff in Us reply to question No. 1 is regarded as proven by the expert and therefore forms the basis of the volume ofplasma for fractionation The amount of the fractionation fee set out in the addendum of Novota as and verified by Mr. Robert is not considered to be established, and the expert has relied on the average value determined by Mr. Grlfols (values listed in the table In answer to question No. 5 of this document)* - the total amount of lost profit is CZK J,041,880,000.00.*

**Variant 11A. The assertion of the plaintiff in its reply to question 1 is not considered to be proven by the expert and he will rely on the actual volume of processed plasma The amount of the fractionation fee set out in the addendum of Novota as and verified by Mr. Robert is considered proven, and therefore the expert is relying on the figures set out in the addendum of Novota as" - the total amount of lost profit is CZK 5,059,224,000.00.*

"Variant IIB. The assertion of the plaintiff in its reply to question 1 is not considered to be proven by the expert and he will rely on the actual volume of processed plasma: The

fractionation fee set out in the addendum of Novota as and verified by Mr. Robert is not considered to be established, and the expen will rely on the average value determined by Mr. Grifols (values listed in the table in response to Question 5 of this document)" - the total amount of lost profit is C2K 4,416,325.000 00.

This document, according to expert, should be read in conjunction with Ihe expert opinion and the subsequent comments of the expert The degree of application of the expert opinion, according to expert, will depend on the further assessment of the arbitration tribunal.

166. The plaintiff, by the submission of 24 May 2007 (Y79), confirms acceptance of the amendment to the expen opinion, give notice of the submission of an application for extension of Ihe claim and statement of claim, requests tbc arbitrators to order the parties to conduct negotiations for an amicable resolution of the matter within a short, e g. one month, period.

167. The defendant, by a submission of 30 May 2007 ($49), commented on the material presented by the expert about which it doubts that it constitutes an addition of the expert. It proposes a re-examination of the expert conclusions. According to the defendant the expert opinion itself, including the materials accompanying it, contains only the description of a "model" situation, or abstract description of a condition that could occur in the market for blood plasma in the Czech Republic. The source data are clearly hypothetical. From this perspective, the general findings of the expert in all the materials, including the expert opinions which have been drafted, must be regarded as useless in these proceedings.

The defendant considers that the above conclusions of the expert can be questioned by pointing out (hat the new evidence presented by the plaintiff is for the great majority documents coming from the defendant and, moreover, purely internal in nature. From the perspective of the procedural roles the evidence is inadmissible, or the plaintiff would have had to indicate the way in which it obtained them. Other documents are statements or claims of the plaintiff, whose veracity has never been accepted by the defendant. With reference to procedural economy, the defendant asks the arbitration tribunal to indicate the envisaged timetable for further action in the matter.

168. The arbitration tribunal, by resolution No. 43 of 8 June 2007, gave the parties a period of three weeks from the date of receipt of this resolution to comment on the "Additional answers to Individual questions of the expert opinion pursuant to Resolution No. 3 of the arbitration tribunal, 19.9.2006", instructed the Expert within three weeks of receipt of the statement to comment on this opinion and decided that after the satisfaction of the requirements or after expiry of the deadlines for meeting them a decision would be taken by the arbitrators on the future conduct of the proceedings.

The arbitration tribunal in the preamble of its resolution states that it considers the "Additional answers to individual questions of the expert opinion pursuant to Resolution No. 3 of the arbitration tribunal of 19.9.2006" to be a supplement to the expert report previously submitted by the expert. The oral hearing for questioning expert, as proposed by the defendant, the arbitrators considered, with regard to the nature of tbc case, to be counterproductive, because the conclusions of expert are based solely on paper documents. If the defendant has any questions on the supplement to the expert report, it can apply to the expert in writing and the expert can also comment on them in writing.

On the proposal of the plaintiff that the arbitration tribunal should instruct the panics to negotiate an amicable resolution of the case, the arbitration tribunal stated that the establishment of such an obligation goes beyond the functions of the arbitrators. The arbitrators can only invite the panics to negotiate a settlement, and such a request would be pan of the resolution and regarded as completely formal. There was nothing to srop the parties, before the final arbitration award, negotiating a settlement. Settlement is ultimately the best solution for any property dispute in the private area.

169. The plaintiff, by the submission of 2 July 2007 (YSO), commented on the defendant's submission of 30 May 2007. In addition it commented in detail on the report and addendum of the expert on the answers to individual questions.

The plaintiff is extending the application in line with the expert conclusions and considers that the conditions are met in the proceedings for a decision to extend the application. The amount of damages has so far been the sole subject of the proceedings. The change of the application rests solely in the change above application in respect of damages; it is not making new factual allegations or supplementary hearings, nor is the defendant authorised on the basis of a different title than the current one. The change of the proposal therefore involves maintaining the plaintiff's allegations and only changing the level of the required amounts. A decision on the amended application could without doubt be based on the current proceedings.

The claim of the plaintiff extends the application and proposes that the arbitrators should now accept the application in the following version:

The defendant is required to pay the plaintiff

* *compensation in the form of lost profits for the first time Since July 1992 until 1 May 2000 in the amount of CZK 5,770,780.000.00;*

* *arrears interest for the period to 31 July 2007 In the amount of CZK 7,487.634.791.00;*

* *the total of damages and arrears interest on 31 July 2007, CZK 13.233.464,791.00;*

* *and costs, whose amount will be quantified;*

* *and arrears interest in the amount of CZK 2,031,033.00 a day, starting on 1August 2007 until payment.*

170. The defendant, by a submission of 3 July 2007 (S50), commented on the supplement to the expert opinion. It stated that it disagreed with the method chosen, which was adopted in view of the fact that it was impossible for the parties to ask oral questions about die expert opinion. This is a violation of the general principle of oral hearing, which can probably be excluded in the arbitration, but only by agreement of the parties. In this case it had not been excluded by the parties.

The defendant has serious doubts about the applicability of the expert opinion and the addendum in the arbitration proceedings. Already for this reason it should have the right to personally hear the author and through oral examination verify the actual ability of the author to explain and possibly justify his conclusions. Accordingly, the defendant in Ihis submission was formulating 193 questions for the expert.

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171. The plaintiff, by the submission of 9 July 2007 (Y81), commented on the defoxianl's submission of 3 July 2007, regarding both the structure and content of the questions which the defendant put to the Expert on the supplement to the expert opinion.

172. The plaintiff, by the submission of 20 July 2007 (Y82a), commented on specific questions of tbe defendant for the Expert. In addition, it stated that after studying the latest submission by the defendant the plaintiff considers that its aim was simply to formulate as many queries as possible, regardless of their relationship to the subject of the proceedings and the final arbitration award already issued. The defendant is apparently refusing to respect the continuity of the dispute and to hear the consequences for its own procedural conduct, especially when it alleges the lack of competence of the expert on questions that it itself asked expert and repeatedly demonstrates why it came out of the factual data that U itself submitted as evidence in the dispute. The defendant, the Czech Republic, is however bound by its procedural actions, as well as its procedural statements from the time of instigation. The defendant is also repeatedly attempting to exert pressure on the expert regarding matters already decided in its findings In older to treat them differently. The plaintiff regards this approach by the defendant as an unlawful attempt to exploit its superiority in the dispute and the disregard by the defendant, the Czech Republic, of its own constitutional order.

173. The arbitration tribunal, by resolution No. 44 of 20 July 2007, added section 2 to the resolution of the arbitration tribunal of 8 June 2007, as fullows: "2. The expert is required withm three weeks of receipt of the comments of the parties in accordance with point I of this resolution to assess their comments and answer the questions that are relevant and relate to the *Additional responses to individual questions of the expert opinion pursuant to Resolution No. 3 of the arbitration tribunal of 19.9.2006.". It also gave the defendant time to comment on the drafi statement of the plaintiff to extend the statement of claim until 2 July 2007.

174. The defendant, by a submission of I August 2007 (S31), commented on tbe further course of tbe proceedings determined by the arbitration tribunal, which it finds to be unusual. The supplement to the expert opinion cannot be seen as a part of it and it is necessary to respond to the supplement in the context of the original opinion. If the action is extended, the defendant slates that it is not dear how the plaintiff came to determine the amount of arrears interest and the dale from which the delay is counted. The defendant also raises the objection of limitation.

175. The expert submitted on 13 August 2007 to the arbitrators the Statement of the expert on the comments of the parties on the supplement to the expert report No. 23/124192/05 dated June 16, 2006" of 13 August 2007 (X341A), which responded to some comments on both sides on the supplement to the expert opinion of 17 May 2007.

176. The plaintiff, by the submission of 21 August 2007 (Y83), commented on the opinion of the defendant's representative, JUDr Milada Sipkova, which was published in LIdova novina on 1 August 2007, which gives false information about the status of the dispute in tbe sense that nine years ago it was decided that the state had caused a loss and must compensate it and apologise. The plaintiff is issuing the public opinion within the context of the conduct of the defendant in the proceedings. Almost all the defendant's argument is directed precisely against tbe factual circumstances of the case, which have already bten finally decided, as well as the length of time during which the loss of the plaintiff arose. In addition, on the public opinion of the Office of Government Representation in Property it expressly rejected

the fad that the Office as a representative of the Czech Republic in these proceedings proposed as the audit expert, E & Y Valuations sro, although the Office itself presented a proposal for its appointment.

The plaintiff notes that the Agreement on the common approach in a dispute over compensation of 7 December 2001 was modified only as to repeal Article 4, with the other articles remaining intact. The plaintiff acknowledges the contractual specification of the mutual interest in an equitable, impartial, swift and final resolution of the dispute and it informs the defendant that it had such an interest and is continuing to respect it and that it is aware of the general obligations under private law to seek to resolve theij dispute by preliminary agreement It reserves at any time in the ftiture, after the substantive decision in this matter or after receipt of such decision, the right to invite the defendant to a Working Group meeting to discuss any contentious issues in the proceedings.

177. The arbitration tribunal on 4 September 2007 by Resolution No. 45 dismissed the proposal of the plaintiff to amend Use decision on the intervention of IVDr Jiri Ursula in these arbitration proceedings as trustified. Resolution No. 46 instructed the plaintiff within 15 days of receipt of the resolution to specify in greater detail the expansion of the action of 2 July 2007, before it is decided to admit the expansion of the action.

By Resolution No. 47 the arbitration tribunal scheduled a hearing for questioning the expert on 9 November 2007, instructed the defendant by the dale of the hearing to provide at its expense a neutral environment, adequate room and technical equipment (computer with printer, copier and fax machine), at the place of the hearing and communicate it to the arbitration tribunal, the participants and the expert within 14 days of receipt of this resolution and instructed flic expert to ensure the participation in the hearing of a person authorised to handle the subject of the expert opinion.

178. The arbitration tribunal by Resolution 48 of 11 September 2007 postponed with respect to the request of the expert (absence of the author of the expert opinion) of 10 September 2007 (X347) the hearing scheduled for 9 November 2007 to 30 November 2007.

179. The plaintiff, by the submission of 12 September 2007 (Y84), requested the arbitration tribunal to schedule a different dale for the hcarmg at any lime until 30 October 2007 because of long-planned medical treatment of the Chairman of the Board, who wished to be personally present at the hearing.

180. The arbitration tribunal, by Resolution No. 49 of 18 September 2007, rescheduled hearing to 20 October 2007 and instructed the defendant by that day to provide at its expense the premises and technical resources for holding an oral hearing and notify the participants, the expert and the arbitrators no later than 5 October 2007 and also in conjunction with the plaintiff to ensure that the hearing is documented by audio-visual recording equipment

181. The defendant, by a submission of 4 October 2007 (S52), informed the arbitration tribunal that it had arranged a hearing room and the necessary equipment in the premises of the Arbitration Court of the Chamber of Commerce of the Czech Republic and Agricultural Chamber of the Czech Republic, Dlouha 13, Prague 1, and that it wall lie accompanied by a consultant in the field of economics.

182. The plaintiff, by the submission of 8 October 2007 (Y85), took note of the announcement by the defendant of the place of the arbitration hearing. The plaintiff insisted on compliance with the legal principle of confidentiality and the participation exclusively of the parties and their representatives. Participation by a third party would mean a violation of the law and the establishment of a procedural defect in (he proceedings. Each party had ample opportunities for economic consultation and preparation for an oral hearing expert.

183. The arbitration tribunal, by Resolution No. 50 of 13 October 2007, look note of the place of hearing and decided that this hearing as defined in j 19 CPC (oral proceedings before arbitrators are always closed) could only be attended by the parties, their legal representatives, the authorised representatives of the expert, the arbitrators and the reporter.

184. The defendant, by a submission of 15 October 2007 (S53), responded to the submission by the plaintiff of 4 October 2007 regarding the requirement for audiovisual documentation, which il regarded as absurd and contrary lo the statutory provisions. With regard to the reference to the principle of confidentiality of arbitration, the argument is irrelevant. The confidential nature of judicial practice is seen as the exclusion of the public, i.e. persons who do not have any function or role, popularly speaking, in the proceedings. Such a position is clearly not characteristic of the expert or of any other person so that the arbitration tribunal reaches the conclusion that this is fair procedure and can take decisions regarding the proceedings as needed.

185. The plaintiff, by the electronic submission of 17 October 2007 (Y86) and subsequently by mail (Y8B), responded to the defendant's response and said that, exclusively in order to avoid further delay in the proceedings and eliminate irrational pressure by the defendant on the arbitrator, it was abandoning the proposal of audiovisual recording of the negotiations. The requirement for the presence of the defendant's consultant at the hearing contrasted with the fact that the party refused to provide an expert explain the law, i.e. statutory cooperation. There was nothing to prevent its using an economic adviser and jointly with him formulating an explanation. The plaintiff insists on respecting the principle of confidentiality as guaranteed by Resolution 50.

186. Josef Stava, Chairman of the Board of the plaintiff, by a letter dated 17 October 2007 (Y87), recapitulated the arbitrator's decision regarding intervention cf JUDT Jiri Orsula and stated that the plaintiff objected to this, because it involved a blatant abuse of the already excessive pressure on the plaintiff. JUDr Jiri Orsula before joining the proceedings or after had performed no procedural act, supporting the plaintiff, submilted no evidence at all, had not made any claim and had not submitted any comments on the evidence nor done anything to that effect On the contrary, he had provided the counterparty with information and documents about the plaintiffs case. Among other things, he has even been removed from the list of lawyen.

The plaintiff asks that the arbitrator reconsider this unsustainable situation, which was created by his decision. If perhaps (he decision of the arbitrator was influenced by the threat of liability for the loss that would have occurred from its suspension of due proceedings, il should be reconsidered. It is obvious that this is a threat, which is indeed usual, but totally unfounded. By contrast, the potential loss of the plaintiff as a result of the past, and probably future steps of JUDr Jiri Orsula is entirely teal. So we suggest that you review your position and terminate the participation of JUDr Jiri Orsula in the proceedings. The damage to the rights of our company,

as a party to the arbitration agreement, in direct connection with any such participation is not just theoretical, but acute.

187. On 20 October 2007, at the request of the defendant a single hearing was held in this dispute, on which questions were put to the expert, represented by the authorised persons Ing. Petr Wcndeiov, CSc., Ing. Lukas Brych and Mgr. David Zlamal. The plaintiff was represented by Josef Stava, Chairman of the Board by the defendant and the legal representative JUDr Jan Kalvoda. The defendant was represented by its legal representatives JUDr Jan Herds and JUDr Milada Sipkova. The intervening party JUDr Jiri Orsula was also represented. The entire hearing is recorded in a written record of this hearing (X373). No objection has been made to the record. The record was signed by all persons present without reservations.

At the request of the arbitration tribunal representatives of the expert confirmed that the expert opinion and its supplement were prepared by the expert and that he maintains his expert conclusions. Representatives of the expert answered questions raised by the legal representatives of both parties, however, they reserved the right to respond to questions that were not able to immediately answer, In writing within a specified period.

At *the* conclusion of the hearing in order to accelerate a final decision on the matter, the arbitration tribunal proposed that the parties should appoint an arbitrator to decide according to the principles of justice under § 25, paragraph 3 CPC. In addition, the arbitration tribunal issued a resolution No. 52, giving the expert a deadline until I November 2007 for written responses to questions put to him at the hearing and answered, and the participants were then given time to comment on the answers of the expert and thereafter the arbitration tribunal would decide on further procedural steps.

188. The plaintiff, in the submission of 29 October 2007 (Y90), commented on the questions of the parties, which were put to the expert in the questioning at the oral hearing on 20 October 2007.

189. The expert submitted to the arbitrators on 6 November 2007 the "Written expert answers to some questions raised during the questioning of the expert on October 20, 2007" of t November 2007 (X374X containing answers to questions put to the expert that were not answered by the expert at the hearing.

190. The plaintiff, by the submission of 11 November 2007 (Y89a), commented in detail on the written answers to questions of the expert on 20 October 2007. Regarding the slate of evidence the plaintiff said that the essence of the defendant's comment was its general dissatisfaction with the demonstration of the plaintiffs allegations. Whenever a specific factual allegation was made, it was disproved and the defendant without further ado had dropped the claim. An example might be the characterisation of SEVAC os a producer of plasma and a competitor for derivarives.

The evidence of the plaintiff had been affected during the dispute by the unlawful practices by the defendant. Indications of this included the release of the transaction and customs documentation of the the plaintiff to the Police of the Czech Republic under the pretext of criminal proceedings in 1993 - 1995, and the fact that after the postponement of its case they were not returned. The defendant attempted by a power of interference unlawfully to impose on the plaintiff the burden of proof and prevent its from proving its own documents. Similarly, the

plaintiff lake* the same view of ihe sudden destruction of the archives of Novo NordLsk with the data on volumes of processed plasma from Czechoslovakia, which occurred immediately after the meeting with representatives of the defendant.

The plaintiff says that il had managed to obtain the documents and material unlawfully returned by the defendant and lost and is now presenting the evidence from them. The commercial activity of the plaintiff prior to the relevant time is now shown in detail. The plaintiff therefore expresses the opinion that, after the expert opinion with the amendments is submitted, in the proceedings any substantial factual and legal circumstances of the claim put forward can be demonstrated.

191. The defendant, by a submission of 12 November 2007 (SS4), commented on the the questioning of the expert and stated that this hearing very clearly confirmed what it had repeatedly argued. The plaintiff had not substantiated its claims and the expert's report did not give any indication whether the plaintiff itself or for other reasons was established in the file, but only of the plaintiffs allegations.

The expert opinion as such is probably useless precisely because it is based on subjective assertions of one of the parties and the defendant clearly points out that, unless these claims are proved, it cannot be concluded that the opinion should be taken into account when deciding on the substance. In this situation, the defendant concludes that the time has come to end the procedure, which the arbitration tribunal has already once declared, and to challenge the parties to submit their final proposals. For these reasons, il is dear that the possible procedure mentioned by the arbitration tribunal under § 25 paragraph 3 CPC, i.e. decisions according to the principles of justice, is unacceptable for the defendant*.

192. The arbitration tribunal, by resolution No. 53 of 26 November 2007, set the expert a deadline to submit his accounts and decided that a decision would be taken on the expert in the final arbitration award.

By Resolution No. 54 of 27 November 2007 the arbitration tribunal instructed the plaintiff within a specified period to discharge the obligation imposed on it by the arbitration tribunal by Resolution No. 46 of 4 September 2007, and then gave the defendant a deadline for submission of comments on the plaintiff and ruled that the delivery of submissions by the pwlics would be decisive for the further stages of the proceedings.

193. The arbitration tribunal on 7 December 2007 (X383) asked the defendant to pay as soon as possible to the Arbitration Court at the Chamber of Commerce of the Czech Republic and Agricultural Chamber of the Czech Republic the costs of holding the oral hearing on 20 October 2007 amounting to CZK. 2,050.00, because the presiding arbitrator was requested by the letter of the Clerk of the Arbitration Court of 29 November 2007 (X382) to guarantee the payment of this action since the defendant, despite repeated to JUDx Jan Herda, had not paid the required amount. According to oral information from the Court of Arbitration, the amount owed was subsequently paid by the defendant.

194. The plaintiff, by the submission of 8 December 2007 (Y93), commented on the extension of the statement of claim and statement of calculation of arrears interest, which the expert did not consider in the expert opinion. The plaintifT was refraining from commenting on the extension of the stafcment of claim because the High Court in Prague was expected in another case to issue a final decision on the calculation of delay alter the effective date of

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Decree No. 163/2005. The decision at first instance of the Municipal Court In Prague had concluded that even claims for which the delay occurred before the effective date of this standard continue to be remunerated according to this standard. In the interpretation of the transitional provisions of Decree No. 163/2005, it is not possible to apply a merely literal interpretation, but the approach must rather be from the perspective of a leleolugical interpretation of the text and purpose of the European Parliament and Council Regulation (EC) No 2000/35/EC on combating Late payment in commercial transactions, so that the term "delay in meeting financial obligations" should be understood as a legal relationship that arises on each day on which a financial obligation is not fulfilled and there is a certain consecutive number of days from the date of commencement of default until the day of meeting the financial obligations. Accordingly, the amount of arrears interest from 28 April 2005 is subject to government order No., 142/1994 as amended by government order No. 161/2005. For the sake of calculating interest, the plaintiff has attached a table with its calculation.

At the same lime the plaintiff corrects a clerical error that occurred in the newly formulated statement of claim, in which the twice mentioned incorrect date "to 31.7.2007" should be replaced by the correct date "30.6.2007" and the once mentioned wrong date "on I August 2007" should be replaced by the correct date "on 1 July 2007".

195. The presiding arbitrator, on 27 December 2007, from received a request the District Court for Prague 2 of 14 December 2007, case no. 7 T 28/2006 (X388), to send the file from the arbitration of this dispute, because it is important for the criminal proceedings in accordance with § 78 paragraph I of the Criminal Code.

The presiding arbitrator responded to this request by a letter dated 4 January 2008 (X390) indicating that this request could not be satisfied with regard to § 6 paragraph I CPC, because he was legally requited to maintain confidentiality about the facts about which he learned in connection with the performance of his duties. At the same time the court pointed out that both sides had access to the same documents that are held in the arbitration file, while the parties are not bound by any legal obligation of confidentiality. Beth parties were sent the notice from the court and the presiding arbitrator sent a reply note (X393 and X394).

On 9 January 2008 the plaintiff sent an e-mail to the presiding arbitrator with • note of its submission District Court for Prague 2, probably mistakenly dated 8 December 2007 (Y94), in which it commented on the court challenge under § 79 para of the Criminal proceedings Code regarding the question of confidentiality of the arbitrators and indicated that the court could obtain in accordance with the law all the documents needed for criminal proceedings which are included in an arbitration case file at the instigation of the Ministry of Health of the Czech Republic, or Office of Government Representation in Property Affairs.

396. On 2 January 2008, the expert submitted to the presiding arbitrator a notice of 18 December 2007 regarding the costs of the expert's report and also two invotces (X3S9), by which these costs were accounted for.

These invoices, however, were returned by the presiding arbitrator to the expert with a letter dated 4 January 2008 (X391), because tney incorrectly identified the payer (the Arbitration Court of the Chamber of Commerce of the Czech Republic and Agricultural Chamber of the Czech Republic, which has nothing to do with this dispute).

197. On 17 January 2008, tbe presiding arbitrator delivered challenge II to ihe District Court for Prague 2 of 11, January 2008 (X399) to release the items according to § 78 paragraph I Code of Criminal proceedings, stating that the court bad permission to release the file in accordance with § 8, paragraph 5 Code of Criminal proceedings, while the presiding arbitrator also pointed out that, if he fkilS to challenge this, be may be depnved of the proceedings as defined in § 66, paragraphs I Criminal Code and subject to a disciplinary fine of up to 50.000.00 CZK. The fact that the file is located abroad was not a relevant consideration fox the court

The presiding arbitrator by an e-mail on 18 January 2008 (X40I) informed the representatives of both parties that the release of the file would violate (he right to fair proceedings end also could jeopardize the integrity of the file. He left it to the discretion of the parties, whether both parties pursuant to § 6 paragraph 2 CPC wished to waive secrecy about the parts of the file from 1 July 2003 to 1 July 2004. It was further noted that in the case of application of these court procedures against him or its household, he would have to react accordingly. According to the sole arbitrator, the court challenge to the arbitration has been suspended.

The following e-mail correspondence between the presiding arbitrator and the legal representatives of the parties indicates that the plaintIT considers the summons and any subsequent proceedings to be unprecedented (X402), while the defendant's legal representative JUDr Jan Herds raises doubts about whether the ongoing criminal proceedings and the court request has, or may have, ary impact on tbe course of the arbitration (X403).

Given that both sides finally permitted the single arbitrator to disclose parts of the file, the presiding arbitrator on 25 January 2008 sent the District Court for Prague 2 copies of the documents on file for the period I July 2003 to I July 2004 and marked in the file as YIO Y26a, SI 1 and S20, V8 and V9 and XI8 to X84. According to the postal delivery record the dispatch was delivered to tbe court on 28 January 2008 (X409).

198. The plaintiff in the submission of 23 January 2008 (Y97), commented on the summons of the court on the issue of the file and found it to be unacceptable and illegal, since the conditions were not met for the procedure pursuant to $ 8 paragraph 5 Code of Criminal proceedings, because there are special rules of arbitration confidentiality in the CPC. The plaintiff, to prevent submission of the file to the District Court for Prague 2, proposes that the arbitrators should be exempt from confidentiality for the period 1 July 2003 to I July 2004 and proposes that the defendant do the same and that the court should be given copies of all requested documents.

At the same time the plaintiff proposes, In line with the current proposal by the defendant, that the arbitrator should end the proceedings and Invite the parties to submit their final proposals.

199. The arbitration tribunal, by Resolution No. 55 of 29 January 2008, rejected the request of the plaintiff of 17 October 2007 four the termination of participation of JUDr Jiri OrsuLa as a party into (he in these proceedings.

By Resolution No. 56 of the same day the arbitration tribunal admitted the change of the application after correction of the clerical error by the plaintiffs submission of 8 December 2008, so (hat the application reads as follows:

- compensation in the form of lost profits for the period from 1 July 1992 until 1 May 2000 CZK 5,770,780,000.00;
- ancars interest for the period to 31 June 2007 the amount of CZK 7,487,684,791.00;
- the total of damages and arrears interest on 31 June 2007 of CZK 13.258,464,791.00;
- and costs, the amount which will be calculated;
- and also arrears interest on the amount of CZK 2,051,053.00 a day, from 1 July 2007 until payment.

The arbitrators considered the most recent evidence which the Parties and the expert had submitted. The parties had not submitted any other documentation, and in their final submissions did not propose to add evidence. According to the arbitrators, the dispute has already been explained so that there was no need for further evidence and he could proceed to its completion.

Accordingly, the arbitrators decided to release on 29 January 2008 Resolution No. 57, which decided that I. The evidence collection is declared closed. 2. The parties shall have a period of 30 days from the receipt of this resolution for the ftnal submission of written proposals. 3. On receipt of the final proposals under point 2 of this resolution or after expiry of that period, the arbitration tribunal will decide on the farther procedural steps.

200. The plaintiff in its final proposals of *6* March 2008 (Y98A) - delivered the arbitrators of 7 March 2008 - commented on the status and subject of the proceedings, the conduct of the defendant and the burden of state control of the inquiry and submitted its final proposal. The subject of dispute, according to the plaintiff, was exclusively the decision on the amount of loss caused to it in die form of lost profits in the period from 1 July 1992 to 30 May 2000, the amount granted to the plaintiff Finally partial arbitration award and the content of the apology, which die plaintiff was demanding from the defendant. The interim award should be taken as the basis of the claim. This finding ruled on the substance of all the components of the claim, except the amount of loss. Part of the arbitration award will be decided on the undisputed amount of the claim, LB. the minimum amount of lost profit for the period during which the arbitrator found that the proposed profit, which is the undisputed time, after which the loss arose, i.e.. I July 1992 to 30 May 2000.

Regardless of the finding of the arbitrators and their contusions in law, the defendant is demanding proof of the existence of a causal connection between the claims and their infringement, and it argues that there is no causal relationship with loss of business because the plaintiff was successful in tenders, so that it rejects the consequences of the definitive findings. It is obvious that the defendant in the proceedings considered the most important argument to be irrelevant. In addition to efforts to distance itself from its own procedural acts, it is trying to distance himself from the final state of the case. From this perspective, each participant is adopting a different approach to the dispute; the plaintiff is relying both on the existing procedural acts by the defendant and the final slams of the dispute, while the defendant is still treating the dispute as though nothing was decided. The subject of the dispute far the plaintiff in its current phase, apart from the content of the apology, is exclusively a decision on what profit the plaintiff lost from 1 July 1992 to 30 May 2000 above the amount granted to the plaintiff by the partial arbitration award.

According to the plaintiff the defendant apparently does not consider itself bound not only by the legal status of the dispute, but also its own procedural acts in the proceedings, which is documented from the material of the Ministry of Health FAR 151-4, in respect of which the plaintiff claims and proves that this material is unequivocally accepted by the parties. It should be noted that the objections that the expert is not relying on indisputable facts are only procedural manoeuvres by which Che defendant is challenging the expert opinion and ultimately the evidence of the case.

Various political groups, in succession, have taken the dispute as an opportunity to certify their effectiveness in defending the alleged interests of the state, and therefore also gain in popularity. As a rule, they have described the previous elite as incompetent and unprofessional and promised a remedy - and success in the dispute - regardless of its condition. The same applies to the current political configuration, which, however, has assumed a position of a consultant paid by public funds, and rhetoric from the previous, electorally discharged, former Prime Minister Jiri Paroubek, the designated expert opinion established by the expert, on "then* assessment (i.e. a private assessment by the plaintiff) and announced a major change, which was based on - finally - "hard" and professional representation by a reputable law firm - disregarding the legal representative of the Office of Government Representation in Property Affairs - and submitting their own opinion by a renowned expert - but this was a very clumsy and superficial document, obviously not deriving from a court expert, or expert institution. According to the plaintiff; the proceedings have shown the abuse of the executive authority of the defendant against the plaintiff and its tendency to improve Its procedural position through (he misuse of public powers.

The current procedural tactics by the defendant are undoubtedly based on its belief that the burden of proof and argument in the dispute lies solely with the plaintiff. The defendant has thus distorted the essence of foe dispute, in which it has failed fully to participate.

According to the plaintiff, the proceedings have demonstrated:

- What was the state of play in the Czech Republic before 1990;

- The presence of the company Diag Human AG from the mid-80s of the last century, as the international as well as a monopoly contract fractionator of NDR in negotiations with the Czechoslovak health administration;

* The fact that the business model of contract fractionation based on compensation of the costs of the fractionator through the price of blood plasma was imposed by the State health administration of the defendant in 1990;

- The existence of a model for indirect contract fractionation, that the plaintiff was offered this model by the Czech medical facilities, that just such a model was not only advantageous for the defendant, but only possible in terms of funding and technological backwardness;

- The fact that the plaintiff possessed ail the necessary administrative permits from the defendant to buy blood plasma, blood plasma, export, import products from blood plasma, mainly as a distribution warehouse and a certificate of good manufacturing practices in the distribution warehouse, and and that for all of these conditions, the plaintiff had priority in the Czech market;

- The fact dial competitors of the plaintiff, for a significant portion of the qualifying period, were presenl in the market without having met the basic administrative and commercial conditions or met the conditions fur tenders by the defendant on the basis of falsified production data (both yield of the products and the cost of production) and the consequent false assumption of importing from the country of origin all products for Czech plasma;

- The fact that the plaintiff up ta its unlawful exclusion from the martsct by the defendant on the primary market for blood plasma had built a position at its own expense and in the face of tough compensation scheme as also in the primary market, whose size is determined by the extent of its investment in the Czech transfusion services and (he competitive priorities and the fact that its own business was legal;

- The fact that the business arrangements of the plaintiff were significantly better for the Czech contractors, and the competitors of the plaintiff achieved throughout the period a higher profit than the plaintiff applied and that the primary market in the Czech Republic at the time did not have any domestic competitor;

- The fact that in the contract fractionation model the positioa of the fractionator is stable;

- Competitive advantages of the plaintiff.

According to the plaintiff, the following allegations of the defendant had been refuted h die proceedings:

- That the competitors returned to the country of origin all production of Czech plasma;

- That the plaintiff failed to complete a single commercial case in the Czech Republic;

- That the plaintiff did not supply part of the defendant's blood transfusion network with technologies;

- tiiat the SEVAC company was at that time a commercial competitor and consumed the blood plasma to manufacture products;

- That the industrial product yield matches the data from the competitors on the Czech partners.

According to the plaintiff, there is evidence that the defendant excluded the plaintiff in a situation its established business conditions were much more costly than cooperation with competitors. This disadvantage is quantified by the evidence in the proceedings. In particular it is shown that variant of addendum I.A to the Expert opinion, which is an adequate statement of claim, is entirely justified. The plaintiff was simply replaced for the duration of the qualifying period by competitors who enjoyed the advantage of one of the dominant features of the primary market, which is stability. This feature is demonstrated empirically, therefore; the exclusion of the plaintiff from the market was made up by competitors, to ensure competent handling of one of the two types of blood plasma; the plaintiff provided both. This has also been established by all the experts who have submitted their reports in the proceedings, in particular the expert appointed.

The unpredictability of the loss is essentially inadmissible as a reason for excluding or restricting the claim for damages, as raised by the defendant. It is not possible to demonstrate dial the defendant, given the usual care with regard to the facts, which at that time the liable party knew or should have known, cannot predict the extent of the loss. The proceedings have demonstrated the profit achieved by two competitors in the field of the plaintiff at the time. This evidence is a factual basis for the eventual decision on the abstract loss of profit, and, in this context, the plaintiff rejects die defendant's defense in accordance with { 379 Commercial Code.

The plaintiff is formulating the content of its already recognised claim on the basis of the agreement with (he defendant. It does so with restraint and it must also be considered to be proven and indeed well known that there have been protracted and public attacks on its integrity. These attacks have been supported by persons in official and constitutional functions of the defendant, generally enjoying a high degree of credibility. These cases have been demonstrated in the proceedings. It is in keeping with circumstances of the case that the defendant has been ordered to publish an apology in the same places where it committed these attacks.

The plaintiff is proposing the issue of the following award:

T The defendant is required to pay the plaintifffor damages in the form of lost profit for the period from I July 1992 to I May 2000 the amount of CZK 5,770,780.00,
the total arrears interest for the period until 30.6.2007, in the amount of CZK 7,487,684.791.00
th total of the damages and interest for late payment of the amount of CZK 13,258,464.791.00 June 30, 2007, and costs consisting of*

- *The fees for legal representation by a lawyer, quantified according to the statutory rate (Decree No. 177/1996) usI 6, paragraph 1 and 7, where compensation is due for 416 acts of legal services and 413 delivery of package (attached) in the amount of CZK 805,239.671.00.00, and value added tax.*

- like *cost of backup expert witnesses established by the expert In the amount of CZK 1,200,000.00*

- *The cost of the acquisition of the expert opinion of NOVOTA as in the amount of CZK 300.000.00.*

- *Remuneration of the arbitrators*

and arrears interest on the amount of CZK 2.051,053.00 per day, starting on 1 July 2007 until payment, all for the benefit of the plaintiff.

1L The defendant Is required to send the plaintiff a registered letter, containing the text: The Cltch Republic - Ministry of Health apologises for its Illegal actions against the company Dug Human SE, which unduly and unreasonably encroached on its reputation and excluded its from business and regrets its unlawful conduct and its consequences."

111 The defendant is required to publish at Its own expense the text of the apology (II) by an at least half page advertisement in the newspapers Mlada fironta Dnes. Law, Lldova

rtovina and Hospodarska nnvina and in primt Itme between 19 00 and 21 00 on the television channels Czech Television, TV ftova and TV Prtma.

IV. The defendant is required to fulfill the obligations set out under /., IL, 111 within one month after the final arbitration award.

201. The defendant in its final proposals of 5 March 2008 (S55) - delivered to the arbitrators on 7 March 2008 - noted that there was no evidence of relevant facts, for which the plaintifT sought to substantiate its application and therefore the defendant considers the application for entitlement to compensation to be entirely legally unjustified. It can be considered as proven that in 1990 the plaintiff began to think about the possibility of trading in some way with the blood, or blood derivatives. Obviously in this spirit it conducted negotiations both with entities in the Czech Republic, and probably through Diag Human AG, also with entities in foreign countries and in the Czech Republic took the steps that would make it possible to engage in this trade.

Even before the plaintiff proceeded to implement its plan and in this respect had incurred substantial expenditure in March 1992, it sent it a letter, signed by then Minister of Health tnd MUDr Bojar, PhD. The consequence of the letter must in this case be seen as legal parameter, which the arbitration tribunal must assume. This does not prevent it expressing the opinion that in fact this letter was r.ot so fatal in its effects as claimed, at least as regards the amount claimed for damages. In any case, the letter was latex interpreted as an net in violation of competition rules and as a cause of property loss for the plaintiff. On this single letter, then, the plaintiff has built the entire structure of its argument of undermining a real business plan and the asset loss occurring in this context. This is pure virtual reality. Ihe plaintiff presents itself as a business entity which, in consequence of the unlawful act, has lost real business opportunities, company name, its material substrate and its exclusive market position, IP as an entrepreneur, that actually undertook a project, but was deprived of this opportunity.

This proposal fur compensation is in stark contrast to the basic principles of liability relationship, as assumed by the Commercial Code { 373 ff in conjunction with ▌757. The fact that an interim arbitration award has been issued cannot according to the defendant knowingly lead to the abandonment of die related principles of liability and evidence of their fulfillment, or the requirement that il be possible for the arbitrators in this matter to be authorised by the interim award to establish an amount other than they have found (and has therefore been proven) and that the amount of the claim is beyond any doubt, given the substantive law.

According to the defendant the plaintiff may be granted the tight to claim damages only if it is proved that its loss resulted from the relevant letter, and then only to the extent to which that letter directly and demonstrably contributed to the loss. Only to that extent can the application of the plaintifT be considered by the arbitrator and, if reason is found to do so, which with regard to the current state of evidence the defendant rules out, actually awarded. However, it is clear that the plaintiff, with its claims and the evidence submitted to support them, is exceedingly scope of a binding arbitration agreement.

The defendant is aware that even the partial decision in the case of 25 June 2002 cannot be revised. But it certainly rejects any suggestion by the plaintiff and its further statement that it had never accepted the claim on the amount of loss, or at least to the extent that the compensation for the latter was admitted by the decision of the arbitration tribunal, which considers it established that the evidence of the expert was collected imdei very confusing

circumstances, not identified with a manifestation of the will expressed by the counterparty in court or arbitration as to an undisputed claim. The defendant does not fundamentally believe that the existence of a causal connection was and is the next stage which the proceedings must continue to examine, in relation to the extent of the substantive loss.

The defendant further argues that the plaintiff is not actively legitimated since 2002 to bring this case, or that It had properly dealt with the previously raised objection. The reason for this fundamental objection consists in the fact that according to the extract front the commercial register on 31 December 2002 the sale of part of the plaintiff company took place to Diag Human sro.

According to the defendant, the expert opinion and materials of the expert leave it beyond doubt that these documents cannot indicate the real amount of the substantive loss, the loss allegedly suffered by the plaintiff The defendant considers that this situation persists today. The defendant again argues that the amount of damages that the plaintiff is claiming in the proceedings has never been the subject of real evidence to support its claim. According to the expert, determining any loss of profit, if not mere speculation, cannot be dene, because basically nothing has been proved. It is very significant in terms of assessment of the applicability or rather inapplicability of the expert opinion that the expert bluntly admits that the evidence presented by the defendant does not take these into account for the simple reason that it is not consistent with the plaintiffs allegations, which in turn are treated as axiomatic. The default data contained in the export opinion by the expert are pronounced as conditional, art subject to full proof. They art therefore a mere simulation of circumstances that never occurred, anticipate events that never happened and assume acceptance by the parties of facts which never happened. From this perspective, this expert opinion appears to be basically unusable. If the arbitrators assess the expert conclusions contained in it in terms of their evidential status, the defendant cannot draw any other conclusion than that they are not in any way sufficient as a basis for a positive decision of the arbitrators.

The plaintiff is claiming damages in the form of lost profits. The loss of profits derives not only the alleged destruction of the intended business plan. It is therefore a hypothetical loss of profit, but this must always be the profit that could be realistically expected, which entails an obligation for substantiation on the part of the victim. The courts in their decision-making practice have assumed that (he determination of lost profits cannot be an arbitrary matter for court, but must have a high probability that comes close on the current thinking to certainty.

This dispute is a dispute about compensation, which must be conducted under the Commercial Code. In assessing the legal justification it is necessary to assess whether all conditions have been met for liability, as that code requires. Regarding the presumption of unlawful conduct by the defendant its performance has been finally determined by an interim award, with which, however, the defendant disagrees. Regarding proof of damages and the amount, the defendant argues lhal the plaintiff has not plausibly demonstrated that the achievement of the lost profits on its part could be realistically expected. It claims that the profit can be regarded as highly hypothetical, and thus legally dubious. The defendant believes that the existence of a causal connection have to be examined in the arbitration, precisely in relation to the extent of possible loss. The object of inquiry would not at all be the facts related to the application claim. The plaintiff has apparently claimed damages for other reasons, and is unjustifiably extending the subject of dispute.

In addition, the defendant gives an overview of the key facts and comments on the evidence presented and draws the resitting conclusions: on the commercial history of the plaintiff in respect of the claims, on the alleged incidents of contractually secured supplies of blood plasma into the Czech Repuhlic, the registration of blood derivatives of Novo Nordisk in the Czech Republic and the termination of the functioning of the plasma unit of Novo Nordisk (HemaSure), the fact that the plaintiff did not offer all blood derivatives, the absence of other causes of the development of the plaintiff in the plasma market, the nature and extent of the consequences of the letter of Minister MUDr Bojar and the assessment of the plaintiffs claim for transfer of shares from the bankrupt estate of Diag Human AG.

In addition the defendant comments in detail on the erroneous calculation of the parameters of the loss of profit, because the calculation according to the expert is not intended to determine the loss of profit, which is the subject of the proceedings, but to determine the profit, what could possibly be achieved, if the plaintiff had been engaged in the development of the Czech plasma market. The calculation is also unusable because of faulty parameters, the incorrect determination of the relevant penod, the use of a business model which iscontrary to the evidence, unsubstantiated estimates of the proportion of the clinical and plasma shares, unproven sufficient capacity of the plasma unit of Novo Nordisk, the conclusions of derogating from the real values (cost, profitability), the unproven yield of Czech Wood plasma at Novo Nordisk, the inflated level of "nomal industrial yield," the unproven cost of processing Czech blood plasma in Novo Nordisk at an undervalued level, "the usual costs of processing," unproven actual selling price for derivatives of Novo Nordisk in the Czech Republic, the overestimated level of the final selling prices of "NGA", the omission of cost items, the unsubstantiated estimate of other costs, the speculative estimate of the market share of the plaintiff and the unproven basis of the market share estimate.

According to the defendant, a decision has not yet been taken on the existence and extent of the causal connection with the infringement by the defendant, and therefore the existence of a causal relation, including its duration must be examined further in the proceedings in relation to the scope of the alleged loss. The burden of proof and the burden of substantiation in this regard lay on the plaintiff and il is obvious that it could not bear the burden. In relation to the causal connection between the defendant's conduct, i.e. the letter of Minister MUDr Bojar, which was described as harmful, and the increase and the amount of damages applied by the plaintiff, the defendant shares the conviction that the question of this connection was not explained and demonstrated by the plaintiff during the procedure. The plaintiff failed to provide any relevant evidence. It confined itself to submitting claims and evidence of proposals in its own way, with a not always entirely logical summary conclusion of its allegedly caused loss and the causal connection with the infringement which did not support this. The very fact of the existence of a partial interim arbitral award against the defendant in any way does not cause serious controversy about the alleged facts, justifying a conclusion on the causal connection, in these circumstances, with the claim of the plaintiff that it suffered loss in a certain amount. Each amount for which the plaintiff had alleged damages mint be established with all legal requirements of liability for damages, including the causal connection.

The defendant disagrees with the assertion by the plaintiff that after the interim and final part of the award objections by the defendant concerning the existence and duration of causality are already irrelevant In the first place, the review of the interim findings of 27 May 1998 explicitly stated that further evidence would be necessary for the extent of the responsibility of the defendant for the alleged loss of profits of the plaintiff (thus recognising that the duration of a causal link has not yet been decided on a binding basis), and secondly, even with acceptance

of the partial arbitration awards, the question of the duration of the connection was established, for further proceedings (which are currently ongoing), in a quite tentative manner (because it happened only in the preamble) and only in relation to the amount covered by the decision. The controversy regarding the evidence and arguments of the plaintiff, while also referring to the evidence relied on by the defendant in the proceedings, crystallized in the unequivocal conclusion that a causal connection between the conduct of defendant and the alleged extent of damages does not exist and objectively cannot exist. The plaintiff failed to provide any relevant evidence which would individually or as a whole justify the conclusion that the letter in question from Minister MUDr Bojai, and only this letter, caused the plaintiff any loss.

According to § 379 of the Commercial Code, damages may be granted to the victim in an unpredictable amount, assessed at the time of the nonperformance of the obligation. It is for the plaintiff to prove that its alleged loss was foreseeable. The plaintiff did not focus at all during the proceedings on the demonstration of such knowledge regarding the market for blood and blood plasma derivatives, which Minister MUDr Bojar or the Ministry of Health at the time possessed, so that after evaluation it oould be possible to say with confidence, with the knowledge of the subjects in respect of any loss caused by the letter and subsequent action, that it was possible to anticipate or predict the claimed loss.

According to the defendant, the plaintiff after the letter of Minister MUDr Bojar to Novo Nordjsk, did not take any action under § 384, paragraph 1 of the Commercial Code, which might avert or mitigate the lOSJ alleged and claimed in the action. The circumstances of the case were, however, not such lhal it was impossible to mitigate the risk of loss. If the plaintiff hails in its preventive obligations and has not demonstrated the existence of circumstances that exclude its liability for failure to comply with the obligation, the loss caused to it is its responsibility and not that of the defendant

According to the defendant, the claim is not justified. The plaintiff in relation to it has not discharged the burden of the argument or the burden of proof and has, therefore, foiled to show that its application in the action regarding the formation of loss has been established by law. Its primary procedural duty to demonstrate its substantive justification to the claim therefore fails. The results of the evidence during the proceedings lead to the unequivocal conclusion that the originally indicated unlawful conduct (letter of Minister MUDr Bojar of 9 March 1992) b not connected with the loss of the plaintiff, with the required causal relationship. The plaintiff could not even describe objectively the claimed damages, or describe the mechanism of their formation. Logically, therefore, it is not possible to reach a conclusion about their level. The plaintiff has mostly focused only on submission of claims and evidence that are no more than a logical summary conclusion about its allegedly caused loss and do not support it in any way (often weakening it by a number of irrelevant facts for the proof of its claim) and which also impermissibly expanded the subject of proceedings as strictly defined by the arbitration agreement of 18 September 1996, and paradoxically, however, supported by the repeated assertion by the defendant that there were reasons other than the letter of Minister MUDr Bojar, which made it objectively impossible for the plaintiff to operate on the Czech market for blood plasma. The content of the evidence cannot determine the level of the claimed amount, or whether the loss corresponding to this amount for the plaintiff actually exceeded the previously granted claim in the amount of CZK 326,608,334.00 (although here the defendant has already presented its objections to the proof as determined by the arbitration tribunal). The plaintiff, in relation to the alleged loss raised in the action, has also failed to fulfill its mitigation (prevention) obligation. For the occurrence of the loss in the claimed level the defendant is

therefore not liable in any way (even if the defendant admits that the plaintiff has sustained any loss, but which it does not).

In view of all the above, the defendant concludes that the claim for damages asserted after the action is not established, and requests the arbitrator to dismiss it A contrary decision would net be fair, because die burden of proceedings reflect the outcome, which, as mentioned, does not prove the plaintiffs entitlement to the amounl of damages it has claimed under the substantive law.

202. The arbitrators, at the meeting on 10 March 2008, ruled that the dispute between the parties was made subject to an arbitration agreement on 18 September 1996 under which the arbitration is being conducted. The subject of the arbitration decision should have been originally for damages in the amount of CZK 199,319,059.00 with arrears interest against the legal representative of the Ministry of Health of the Czech Republic by the letter of the plaintiff dated 12 September 1995.

It is welt known that arbitration will be charged. The costs of arbitration axe the remuneration of the arbitrators, costs of travel, etc. administrative costs etc. The relevant Czech law, by which the arbitration is governed, is the CPC. However, it does not determine the amount of remuneration of the arbitrators or other fees that the parties should pay for the arbitration decision and the referral of the dispute. Permanent arbitration courts have their own scale of fees applicable after the action usually paid by (he plaintiff or both sides half and half.

This arbitration is, however, an ad hoc arbitration. In such arbitration a decision ia usually taken on the remuneration of Ihe arbitrators by the litigants, or the arbitrators themselves. According to Ait. 39, paragraph 1 of the UNCITRAL Arbitration Rules, the remuneration of the arbitrators must be reasonable with regard to the value of the dispute, the complexity of the subject matter, time devoted to the dispute by the arbitrator, and other circumstances related to the relevant case.

The parties designated by mutual agreement of 6 November 1996 a fee for the arbitrators of CZK 500,000.00. This remuneration was determined at the tine when both parties assumed the amount in dispute to be the amount of CZK 199,319,059 00, and secondly, it was assumed that a prompt decision would be reached on the action. This assumption has not been fulfilled. In the meantime, the arbitrator has issued an interim and partial award. Currently, it is assumed that the dispute will now end after twelve years and the arbitrators will be able to proceed lo ■ final arbitration award, i.e.. decide on all the claims raised in these proceedings.

The present arbitration tribunal came to the conclusion that the arbitrators fee established by the parties is not reasonable especially with regard to the time that the arbitrator hearing the dispute has had to spend (up to 10 March 2008 57 procedural resolutions issued), the value of the dispute increased to an amount exceeding CZK 13 billion (i.e. increased 66 limes), the dispute acquiring an international element and the dispute being much more complex legally than appeared at the lime when the arbitration agreement between the parties was concluded.

The arbitrators have therefore decided that they should themselves decide to increase their remuneration tor the discussion and decision of this case, even though they were aware that the parties do not agree with their decision. As a basis for calculating their fees they have used a scale of costs of arbitration, which is annex No. I to the Rules of arbitration costs, which are an integral pari of the Rules of the Arbitration Court at the Chamber of Commerce of the Czech

Republic and Agricultural Chamber of the Czech Republic and set a remuneration in the amount of CZK 11.092,113.00, from which must be deducted the amount of compensation already paid amounting to CZK 500,000.00 such that the amount thus determined is CZK 10.592,113.00. This amount was then under the current practice of arbitration divided by 40% fur the presiding arbitrator and 30% for the other two arbitrators. The arbitrators then on 10 March 2008 issued Resolution No. 58, which decided to increase the amount of their remuneration to CZK 10,592,113.00 and ordered the parties that each of them should pay the appropriate amount onto the accounts specified by the arbitrators.

203. Health Minister MUDr. Tomas Julinek, by an official letter dated 3 April 2008, Ref MH 10264/2008 (X438), told the arbitrators that he was "forced to communicate in terms of my responsibility" that he disagrees with the increase of the remuneration of the arbitrators, as the increased amount of remuneration is not demonstrated. In addition, he told the arbitrators that he holds the same opinion as the Office of Government Representation in Property Matters.

In contrast, the plaintiff has expressed willingness to the increase of the remuneration of the arbitrators by an e-mail of 20 March 2008 (X435).

204. The expert, on 17 April 2008, submitted to the arbitrators two invoices, which invoiced costs of the expert's report (now with correct data). Invoice No. CZI.040333200 of 15 April 2008 (X442) charged for the cost of Ernst & Young related to the verification the expert at CZK 641,000,64.00 and Invoice No. CZL0400000201 of 15 April 2018 (X441) charged for all work performed by the expert and expenses incurred in connection with the expert activities in the total ameunt of CZK 949,508.14.

205. The **plaintiff,** in the submission of 25 April 2008 (Y99), expressed the opinion of the Minister of Health MUDr. Julinek regarding the increase of the fees of the arbitrators. It was noted that according to law No. 201/2002 the period dunng which the Office of the Stale in matters of property was active, any procedural steps token by the competent organisational unit in the proceedings are ineffective and any legal actions that a government department performs and are counter to the position of the Office in this case are invalid. From public sources it is known that the Czech Republic was not in any way friendly in tbits case, and have the attorney JUDr. Zdcnck Novacek for a few non-essential tasks and confusing legal services CZK 10 million and in the event of success in the case agreed to pay CZK 170 million. For a small scale expert opinion it paid the experts lug. Horski and Ing. Svoboda more than CZK 5 million.

According to the plaintiff, the extreme length of the dispute, instead of the intended rapid decision, is not attributable to the delay of the arbitrators but to delays by the defendant, the regular change in the value of the claim, the factual complexity and interdepartmental overlap of facts, assistance from the intelligence and law enforcement services, public attacks by constitutional representatives on the independence of the decision and, starting in 2006, the presence of a foreign clement in the proceedings are conclusive circumstances of the dispute and at the same time sufficiently specific reasons to justify an increase in remuneration of the arbitrators, which were not present at the time of the conclusion of the arbitration agreement. The plaintiff considers that the additional remuneration of the arbitrators is appropriate, and asks the defendant to consider the circumstances.

206. The arbitration tribunal on 2B April 2008 characterised the opposition of the Minister of Health MUDr. Julinek of 3 April 2008 to the increase in their rcmunerarior as undemonstmted. Leaving aside for the arbitration tribunal the fact that the defendant is not currently represented

by the Ministry of Health, in its opinion the letter of the Minister indicates a special "valuation" of the work of the arbitrators for the entire duration of the arbitration. The arbitrators believe that sufficient reasons in its resolution No. 58 are given for all the facts for which they have decided to raise theu remuneration and secs no reason to "beg" the defendant to pay the increased fees by submitting any "specific justification", and therefore issued on 28 April 2008 Resolution No. 59, which canceled its resolution of 10 March 2008 to increase the remuneration of the arbitrators and the obligations of the parties to pay the increased fee the arbitrators. In addition, the arbitrators decided that in the event that after the publication of this resolution the increased fees had been paid to the arbitrators by any of the parties, such remuneration would be immediately returned to the party.

207. Because the intervening party JUDr Jiri Orsula submitted on 17 April 2008 to the arbitrators his final proposal of 16 April 2008 (V24), the arbitration tribunal issued on 28, April 2008 Resolution 60, which instructed the plaintiff and the defendant to comment within a specified period on the proposals contained in intervention in the final proposals of 16 April 2008, especially the part labeled "Resolution"; the intervening party JUDr Jiri Orsula was then instructed by the arbitration tribunal within a specified period to submit to the arbitration tribunal a final judicial decision that it was the claimant for 30% of the claims raised in this dispute, respectively, a final oourt decision that its contract with the plaintiff for assignment of 30% of the claim is valid. On receipt of the submissions by the parties and the required evidence or intervening lapse of time after delivery, the arbitration tribunal shall decide on the further stages of the proceedings.

JUDr Jiri Orsula, in his final proposals oft 6 April 2008, which were submitted in writing to the presiding arbitrator on 5 May 2008 (V25), as intervening party proposed the Lssue of the following award and the following resolution:

*7. ***The defendant is required to pay .... CZK as compensation for probable loss ofprofits.***

2 The defendant is required to pay .... CZK as Interest on the amount indicated in the ruling I

3 The defendant is required to pay CZK 259,251,8)2.00 and interest due for the period 51.10 1993-3112 200 on the amount, 326,608,554 00 already paid by the defendant under the partial arbitration award, which was issued in this matter on 25.6.2002.

4. The defendant is required to pay CZK 720.000:000 00, as financial satisfaction

J. The defendant is required, on the amounts mentioned in statements 1.2 3 and 4, to

a) pay 705% of the plaintiff, within fifteen days of the fnalUy of the arbitration award.

b) pass to judicial custody 30% within 13 days of the final arbitration award. This placement in judicial custody for the Czech Republic effects payment of the sums in question

6. The defendant is required to give custody of the court for the amount or part of that person or those persons who demonstrate that the defendant's final court decision has become final arbitration or judicial settlement as to the amount in judicial custody, or tn respect of any part thereof

Resolution:

L Arbitration on 30% of the alleged claim of the plaintiff should be suspended for 90 days.

2. The arbitration (ribuTtal calls on the defendant, the plaintiff and intervening party on the plaintiff's side to make - with regard to the alleged liability of thirty percent of the creditors claim that the plaintiff is placing under local control - attempts to reach cm agreement that would clarify this situation, In substantive or procedural law, at least so that the plaintiff In agreement with the defendant has admitted In the local arbitration the participation of those who claim to be part of the original creditors of the claim of the plaintiff against the defendant.

J. Afier the deadline mentioned in the ruling in J, the arbitration will continue. The tribunal reminds the plaintiff that is in its interest - at the risk of failure in part to achieve the alleged claim - to substantiate Its claim for the entire amount subject to the proposal of evidence in support of Its assertions.".

208. The plaintiff, in the submission of 9 May 2008 (Y100), expresses the view that JUDr Jiri Orsula should not be intervening and the submission of 5 May 2008 is irrelevant, regardless of the resolution of the arbitrators, who accept him as an intervening party. It is again confirmed that the purpose of its participation in the proceedings is not to assist the plaintiff, but alleged monitoring of the interest in intervention. 1hese interests are in conflict with the interests of the plaintiff The "Final proposals" of JUDr Jiri Orsula oontatn a direct attack on the procedural position of the plaintiff because the plaintiff proposes to admit only 70% of the claim and alleges a lack of locus standi in these proceedings and in view of the evidence proposes to stay the proceedings.

According to the plaintiff JUDr Jiri Orsula should not be intervening in these proceedings, and therefore the plaintiff contends that the arbitrators did not consider the content of the submission of the intervening party, so that there is an inconsistent procedural position that did not take account of the proposals to formally cancel its decision about JUDr Jiri Orsula that bolds a position of intervention for the plaintiff and in future JUDr Jiri Orsula should not be regarded as an intervening party for the plaintiff.

209. The defendant, by the submission of 13 May 2008 (S36X told the arbitrators that it totally disagrees with the final proposals of the intervening party as 1 whole, for reasons obvious from its final proposal. It also disagrees with part of the "Resolution*. The defendant notes that apart from the claim of the intervening party it is not aware of any relevant evidence that the intervening party was the assignee of any entitlement under the arbitration claims of the plaintiff, and certainly does not see any reason fur the proposed suspension for 90 days.

210. The plaintiff submitted to the arbitrators on 21 May 2008 (Yt01) and on 23 May 2008 (with the Anal clause - Y102) the arbitration award issued in arbitration proceedings under fie. No. AdhucO1/08 of 16 May 2008, conducted between Ing Zdenek Casks as the plaimiff and the company DIAQ HUMAN SE as the defendant for payment of the amount of CZK 16,330,417.00. During this arbitration, the claim was the plaintiff was asserted with JUDr Jiri Orsula against the Czech Republic in the proceedings pending the arbitration proceedings, end it should be assigned by Diag Human to JUDr Jiri Orsula and which JUDr Jiri Orsula then assigned on to the plaintiff Ing Zdcnck Casks. That award came into force on 19 May 2008.

Th* action was dismissed because the only arbitrator concluded invalidity or, alternatively, ineffectiveness of the alleged succession agreement, which JUDr Jiri Ursula had concluded with Diag Human as.

211. JUDT Jiri Orsula was demonstrably served resolution of the arbitration tribunal no 60 of 28 April 2008 by which he was instructed to submit to the arbitration tribunal a final judicial decision on the legitimacy of his claim against the plaintiff, with acknowledgment of receipt of 2 May 2008. JUDr Jiri Orsula within the stipulated period of I5 days has not submitted any observations or any final judicial decision to the arbitrators.

The active commented again on the intervention of JUDr Jiri Orsula in its submission of 20 June 2008 (Y103), staring that contrary to the intention of the major intervening party it could not impose intervention on its side. Accordingly, its opinion still remains that JUDr Jiri Orsula is not an intervening party on its aide and gives account to the arbitrators that its procedural decisions should be redesigned to comply with the legal state of affairs.

The arbitration tribunal nevertheless decided, by Resolution No. 64 of 26 June 2008, to give JUDr Jiri Orsula an extended deadline to meet his obligations to the arbitrators under Resolution No. 60 of 28 April 2008 within 15 days of receipt of this resolution. Resolution No. 64 was demonstrably served on JUDr Jiri Orsula with acknowledgment of receipt of 1 July 2008. Within the extended deadline of the arbitrators JUDr Jiri Orsula has not submitted a final judicial decision or any comment.

The arbitration tribunal therefore issued on 4 August 2008 Resolution No. 6S, which cancelled its resolution No. 31 of 30 December 2005, admitting the participation of JUDr Jiri Orsula on the side of the plaintiff because by the date of his entry as an intervening party in these proceedings neither party supported the plaintiffs position and he did not submit any evidence in its favour, but rather acted contrary to hs interests. In addition, the arbitration tribunal decided to disregard his final proposals of 16 April 2008.

212. The arbitration tribunal rrpcatodly urged the plaintiff to specify the default interest applied. Although the plaintiff presented a calculation of the default interest applied, in the opinion of the arbitrators this calculation was sufficiently specific and auditable. Accordingly, the arbitrator issued on 13 June 2008 Resolution No. 63, which instructed the plaintiff, within seven days of receipt of the resolution, to specify tfve default interest applied, for what amount, how much and for what period it should be applied by the arbitration tribunal, if the action meets the requirements to review ha applicability. The defendant was then given by the arbitrators a deadline to comment on the specification of default interest by the plaintiff.

The plaintiff commented on the default interest claimed in the submission of 20 June of 2008 (Y103). In the submission the plaintiff further stated that the compensation amount improperly claimed CZK 5,770,780,000.00 as it did not consider the partial payment of 16 January 2003 and because it partly reduced its claim to the amount of CZK 5,444,171,666.00. The difference was partly taken back in the action. The plaintiff is thus claiming total compensation of CZK 5,444,171.666 00 and arrears interest on 30 June 2007 the amount of CZK 7,487,684,791.00, for a total amount of CZK 12,931,856,457.00, and arrears interest in the amount of CZK 2,051.053.00 from I July 2007 to paymenL

The defendant, by the submission of 8 July 2008 (S57), says that totally disagrees with the evidence of the timeliness of the claim, because of the subjective termination of the limitation period provided for claims for damages which passed on 19 March 1996. All claims in excess of CZK 197 million are regarded by the defendant as forfeit and it raises an objection of limitation. This objection applies only on a precautionary basis, albeit for reasons that applied throughout the course of the proceedings, so that the plaintiff must accept its substance as unjustified and unproven.

The arbitration tribunal, by Resolution No. 66 of 4 August 2008, allowed the partial withdrawal of the claim by the submission by the plaintiff of 20 June 2008.

213. The arbitration tribunal at its meeting held on 4, August 2008 decided that all the circumstances of this case have been sufficiently clarified, and therefore by Resolution No. 67 of 4 August 2008 declared the dispute to be terminated, and it decided that, both for reasons of procedural economy and so that both parties could receive the final award at the same moment in time, the parties should receive a written arbitration award, with the date and place of delivery of the final parties for the award being announced in due course by the presiding arbitrator.

214. The arbitrators considered it necessary in the previous grounds of the final arbitral award to briefly describe the conduct of the arbitration proceedings that lasted for six years after the second interim award, including a brief description of each of the procedural documents in the file, submissions of the parties and third parties (along with their designation), primarily for a quick orientation of any review of the arbitration tribunal which could be appropriate under the provisions of the arbitration contract far his final award.

213. The arbitration tribunal considers it necessary further to state that this dispute is not only atypical in the amount of the applicable requirements and the fact that one of the parties was, until the transfer of its headquarters abroad, a Czech legal entity and anolher party the Czech Republic, but also in its considerable media coverage and the appearances of various representatives of the Czech state, i.e. representatives of the defendant, with public statements that were often in conflict with the state of the proceedings.

It should also be noted that person intervened in the proceedings who did not have any legitimate legal position when the defendant was a party legally represented by the Office of Government Representation in Property Matters. This relates to the above-mentioned memoranda of the Minister of Health MUDr. Emmerova (deprivation of the presiding arbitrator of confidentiality for police investigations) and MUDr. Julinck (disagreement with the increase in remuneration of the arbitrators), the legal representative of the defendant did not object to the submission of these health ministers, though he did object to the press conference and atatements by the plaintiff, which was responding to UR previous public appearances of representatives of the Czech Republic. The Ministry of Health in the statement of 25 July 2008 stated that Oiag Human had not demonstrated how it had suffered a loss, and therefore it was not possible to reach a conclusion about its level. Health Minister MUDr. Julinck in a statement said that if the case came before a court, not the arbitration tribunal, the state would win such a dispute statement.[1] The arbitrators considered unjustified this interference in their decisions

[1] Quixed from Priv» of 26 July 20CS, p. S.

through public questioning of their professional expert cp«ruon and an attack on their independence.

The documents, contained in the file, indicate quite clearly that its content was of interest to the Czech Republic Police, the Parliamentary Enquiry Commission as well as the District Court for Prague 2 The arbitration tribunal has throughout the proceedings made every effort to ensure the integrity of the arbitration file, so that the file was transferred to a safe place abroad for the time until the release of the final arbitration award, as both sides were informed. The integrity of the entire file until the release of the final arbitral award was secured by the arbitrators.

Whcn the District Court for Prague 2 threatened withdrawal from the presiding arbitrator of the arbitration file and a fine up to CZK 50,000.00, U. unprecedented intervention *in* the ongoing arbitration proceedings, the legal representative of the defendant raised a doubt to the effect that "... pending criminal proceedings and the request of the court acting on the part of the file, it is unclear whether it could have any impact on the course of the arbitration". 1le said it was at the stage of arbitration at which the arbitrator considered the evidence and the release of a final arbitration award According to the opinion of the legal representative of the defendant JUDr Jan Herda the arbitrators arc able to formulate and justify the award without having to have the documents in the arbitration file.

In partial justification of the award cf 25 June 2006, we also refer to the defendant's submission that "... contains an obvious threat to the arbitrators when it points out that the way the report was referred to the specified expert is now seen as an offence, and the matter is, according to the information of the defendant, subject to investigation by the organs active in criminal proceedings.".

216. One of the basic benefits and the reason for which arbitration is preferred in international and domestic business relationships and similar rather than proceedings before courts in general is their speed. This cannot be said about these proceedings. The defendant is defending itself against a finding of the arbitration tribunal that the proceedings amounted to obstruction, and proceedings have been unreasonably protracted. It should be noted that the approach of the defendant was not constructive in many stages of the proceedings, quite the contrary. The file documents, confirming Use correctness of this view of the arbitrators. The defendant, as follows from its submission, again wanted to prove the facts, which were already the subject of the final decision by the arbitration tribunal in the arbitration awards issued, demanding restoration of arbitration, which is an institution which is totally inadmissible in arbitration, and refused the repeated demands of the arbitration tribunal to agree on the prison of the expert of the plaintiff, for the purpose of reviewing the arbitration award.

The extension of the time of the proceedings also reflects the fact that the Ministry of Health after the effective date of Act No. 201/2002 refused to hand over records of this case in the documents the Office of Government Representation in Property Affairs. Even the legal representative by the defendant, who now objects to the claim that the Czech Republic acted as the defendant in the proceedings through obstruction and prolonged proceedings, says in his letter of 3 December 2003, "from the same lime, basically the Office can do nothing, leaving it to the arbitrators to arrange the proccdual representation of the state in compliance with the law". It is not possible for the arbitrators to decide who has the right to represent the Czech Republic, if it that is a valid law of which clearly shows that representation rests with the Office of Government Representation in Property Matters. The fact that the Ministry of Health did not

comply with the provisions of applicable law cannot be attributed to the arbitrators, and it does not mean that the arbitrators had jurisdiction to impose representation and the Ministry of Health must follow the law as it stands.

The file is accompanied by a letter from JuDr. Pavel Rychetsky, Deputy Minister of the Czech Republic, dated 30 August 2001, No. 36966/D1 - LRV, which informs PhDr. Vladimir Spidla, 1. Deputy Prime Minister and Minister of Social Affairs in the Ministry of Health asking that the various conditions delaying the fulfillment of Resolution No. II86/V, concerning the dispute with D1AG HUMAN as and requests that Deputy Prune Minister Spidla resolves this problem and, in collaboration with the Minister of Health, takes measures that will lead to a rapid and legally definitive resolution of the matter. Although the Ministry of Health and the plaintiff signed agreement on 7 December 2001 on a common procedure in a dispute over damages, this did not expedite the proceedings.

217. Amicable resolution of any private dispute by the parties themselves without the involvement of • third person (body) is considered the most effective, fastest and least expensive way to resolve it. The documents in the file show tliat the plaintiff wanted after the action in 1996 to resolve their claims amicably. In point X. of the interim arbitral award a period has been granted to the parties of three months from the receipt of the interim findings to reach an amicable settlement. At the request of the parties it was not possible to conclude a settlement confirmed by an arbitration award.

The arbitrators have made efforts to this effect in the further course of proceedings for work to resolve the dispute by settlement or other similar agreement. They could not, however, as demanded by the plaintiff, order the parties to conclude a settlement and give a specific deadline. The resolution of the arbitration tribunal and the minutes of meetings of the arbitrators clearly show that an amicable solution was preferred by the arbitrators and parties were constantly encouraged in this direction, but this did not find a positive response from the defendant, as it from the beginning of the proceedings it assumed the premise that the claims made by the plaintiff are unreasonable because it had not demonstrated the existence of a causal connection, and the plaintiff could not therefore have sustained a lass.

On the acceptance by the Czech Republic of the possibility of concluding a settlement, there is also the letter of MUDr. Michal Pohanek, 1. Deputy Minister of Health, to the plaintiff of 7 August 2000, which is in the file, to the effect that *CR prefers a quick and definitive end to the dispute, but only on condition that it will be fur a fair settlement for the CR which, however, is convenient for both litigants. In this context, the arbitrator only states that at the time the claim was asserted by the plaintiff it amounted to nearly 200 million CZK. Now, at the time of final decision in the matter, the claim asserted is 66 times higher.

218. It is common ground between the parties that their substantive relationship is governed by the Czech Commercial Code and the course of the proceedings is subject to the CPC. The fact that in this dispute during the proceedings the headquarters of the plaintiff was moved abroad, i.e. the international element, in the opinion of the arbitrators is irrelevant in terms of substantive law. In their legal opinion it cannot have mandatory status, according to which decisions are made, but rather the dispute must be subject to a single legal system from its inception until the final decision on it.

Even if the arbitration tribunal accepted, which it does not, that it is necessary to determine the law under the dispute rules, they could still refer on the dispute with the criterion to § 15 of Act

No. 97/1963 on International Private and Procedural Law, as amended, to the right Czech - because that section stipulates that: "Claims for damages unless the breach of obligations arises from treaties and other acts will be governed by the law of the place where the loss occurred, or the event giving rise to the claim for damages".

The arbitration tribunal, in the proceedings with regard to the proposals by the defendant (the proposal for new proceedings), JUDr Jiri Orsula and lng Caska who were trying to join these proceedings as a party or intervening party, considered the issue of the application of the Code of Civil Procedure in arbitration proceedings. $ 30 CPC provides that unless otherwise stipulated by the CPC, proceedings before arbitrators will be appropriately governed by the CPC provisions. Thus there is no specific application of the subsidiarity provisions of the Civil Procedure Code, but it will always depend on the discretion of the arbitrators when the provisions of the Code of Civil Procedure apply in this case and when not. The Supreme Court of the Czech RepubJic in Case of 25 April 2007, case no. 32 Odo 1528/2005 concluded that individual provisions of the Code of Civil Procedure cannot automatically be used in arbitration. Appropriate use of CPC in accordance with § 30 CPC must be interpreted as "... taking into account the general principles underlying the Czech arbitration process, it means die standards of Civil Procedure, under the general framework of the principles of Czech arbitration."

The provisions of § 25 paragraph 3 CPC admitted that the arbitration dispute should be resolved according to the principles of Judicial procedure, but only if an arbitrator is expressly mandated to the parties. At the oral hearing on 20 October 2007, the parties drew the attention of the arbitration tribunal to this requirement. The defendant in its submission of 12 November 2007 told the arbitrators that such a procedure is unacceptable for its part, ie. that it disagreed with the resolution of the dispute according to the principles of judicial procedure.

The arbitrators therefore settled this dispute strictly in accordance with the relevant Czech legislation.

219. The defendant, after the establishment of the arbitration tribunal In the present composition, by a submission of 6 May 2003 proposed that the arbitration tribunal should deal with the legality of the arbitration, including the legality of the arbitration agreement and whether the conditions under which it may decide on the substance are met. Even in subsequent submissions, the defendant raised the objection that the arbitrators could not take a decision in terms of the arbitration agroemenL

From the above it is obvious that the defendant, although the dispute began on and after the release of four arbitration awards, has challenged the very essence of the arbitration, and the possibility of arbitrating the dispute, which is the subject of these proceedings. The possibility of arbitrating the dispute means the condition that the dispute could be dealt with by arbitration. The possibility of arbitration can be viewed in terms of procedure (admissibility of the dispute before an arbitrator) or in terms of contract law (which governs the lawfulness of the contract). The possibility of arbitration can be further divided into objecrive and subjective. The objective possibility of arbitration means tbe definition of Issues that may under (he law be dealt with in proceedings before the arbitrator. The subjective possibility of arbitration means defining (he dispute in terms of the suitability for the subjects of legal relations to resolve their disputes by arbitration.

Lack of arbitrability must be addressed by the arbitrators during the arbitration proceedings without an application, because arbitrability is cue of the conditions of proceedings, whose failure cannot be remedied later. Accordingly, the arbitrators addressed this issue in detail during the proceedings, i.e. even after they had released four arbitration awards.

For a dispute to be resolved under the CPC, the discussion in the proceedings must meet certain legal requirements: it must be a property dispute, it must be a dispute in a hearing and the decision must have the authority of the general court, it may not be a dispute arising out a connection with the enforcement or implementation of a further dispute caused by bankruptcy or settlement (from the entry into force of Act No. 296/2007 incidental disputes are excluded) and the subject matter may be the subject of a settlement. All these statutory conditions in the opinion of the arbitrators are met in the present arbitration throughout its duration, ix. from the date of the action until the date of issue of this final arbitration award.

The Czech Republic (Czechoslovakia) had been bound since 11 February 1964 by the European Convention on International Commercial Arbitration of 21 April 1961 (Decree No. 176/1964) according to which each Contracting State, when signing, ratifying or acceding to the last declare that it will resttict the possibility to conclude arbitration agreements to "legal persons of public law." Czechoslovakia and the Czech Republic did not, either during ratification of the Convention or later, introduce any exclusion from arbitration agreements for the State itself or its authorities. The amendment to that effect came in Act No. 245/2006 which was inserted into CPC $ I 2 with the proviso that "this law cannot be used to resolve disputes of public non-profit Institutional health facilities established under a special regulation".

Thus, if the provisions of 5 2 1 CPC mention "parties," they should be deemed to be natural persons, legal entities, other entities with legal personality and the state, l.e. also the Czech Republic. Efforts by MP Koudelka to exclude the state from arbitration have not received legislative approval.

According to § IS I and 2 CPC the arbitrators are authorised to decide on their own jurisdiction. An objection of lack of jurisdiction, based on die absence, nullity or termination of the arbitration agreement, unless the objection is based on the grounds that the matter has not been the possible subject of an arbitration agreement, mainly raised by a party by the first submission in the proceedings on the substance. The response by the defendant of 29 November 1996 indicated that the defendant began to discuss the dispute on the substance, rejecting the proposed action, and did not raise any objection regarding the invalidity of the arbitration agreement or objection that the arbitration agreement concluded did not apply to this dispute.

Among the parties to the dispute, it is not the issue that on 18 September 1996 an arbitration agreement was concluded, which is defined in article I. of the subject matter of arbitration as follows: "The Contracting Parties agree that the dispute between them about the damages supposedly caused in connection with a letter of MUDr Bojar, CSc. then Minister of Health of the Czech Republ k, to K. Eldrup - Jorgensen, Vice President A/S (Cobenhavn NovoNoidisk of 9 March 1992, will be decided in arbitration pursuant to Act No. 214/1994 on arbitration and the enforcement of arbitral awards, by independent and impartial arbitrators. Article IV. contains the following provision: "The proceedings will be held at the place designated by the arbitrators. The Parties shall, notwithstanding § 19 2 of law no 216/1994, agree that the proceedings will be conducted in principle in writing, but for any hearing of witnesses or experts, the arbitrators and parties will convene an oral hearing. The parties empower the

pitsiding arbitrator to decide procedural issues under § 19 1„ second sentence of Act No. 216/1994".

The text of the arbitration agreement establishes a definite conclusion that the arbitrators had restricted power only for a decision on a claim for damages, which were allegedly inclined m connection with a specific letter of the then Minister of Health and MUDr Bojar. It is possible that the jurisdiction of the arbitrators shall also apply to access areas associated with that claim and to compensation for the costs of the proceedings, i.c. including costs of legal representation of both parties.

The arbitrators decided that the arbitration would take place in Prague 6, where the final arbitration award would also be issued.

Although the defendant tried in die proceedings before the ordinary courts to establish the invalidity of the arbitration agreement, it has not been successful even In the court of first instance and to date has not submitted a decision to the arbitrators, nor is it claimed that there has been a final judicial sentence that has declared the contract void. On the contrary, the file contains the ruling of the Regional Commercial Court in Prague of 6 I>eccmber 2000, case no. 5 Cm 191/99-56, which came into force on 15 February 2001 and in which it was decided that the "action for a declaration that the arbitration agreement dated 18.9.1996 is invalid is rejected".

The arbitration tribunal in its original composition finally ruled on its jurisdiction to decide this dispute in the form of an interim arbitration award, as shown by VI. of its grounds. The arbitration tribunal in the present composition does not see any **reason** to change this decision. The arbitrators hold the legal opinion that these proceedings are based on the active legitimation of the plaintiff and the passive legitimation of the defendant In the legal opinion of the arbitrators and the defendant, neither JUf>r Orsula nor Ing Casks have presented any relevant evidence that in this case there is no legitimation of the plaintiff regarding the asserted claim, or part thereof.

220. The arbitrators are of the opinion that both sides had an equal footing throughout the arbitration proceedings referred to in § 18 CPC, because they were given the same opportunities to exercise their rights in order to determine the facts of the case necessary to resolve the dispute. The arbitrators have obtained ail the documentary evidence that the parties submitted as evidence and also conducted the expert report and its additions, carrying out at the request of the defendant a questioning of the expert. The performance of other evidence collection has not been proposed by the parties. The detailed evidence in the proceedings that were conducted is described in the individual records of meetings of the arbitrators and entered in the file.

Regarding the evidence we can mention the unusual approach of the defendant, which often challenged evidence presented by itself in a previous stage of the proceedings, i.c.. some of its previous legal representatives. This fact can be documented for example in relation to the material prepared by the Ministry of Health - Material FAR 151-4 of 3 May 2001 and the first submission of the defendant diredy to the expert, as confirmed by the expert not only to the representative at the hearing held on 20 October 2007, bul also explicitly given b addendum 4 "Copies of documents on the Opinion provided by the defendant" under serial No. 17. "Letter to the department of pharmacy and drug regulation from the Ministry of Health on 3 May 2001 Ref FAR-151-4'\ and that thereafter the defendant refuses to admit the expert opinion as

indisputable procedurally and substantively proper documentation of the Ministry of Health on market sire, which are additionally labeled as" background for the expert witness". This means that it is refusing to recognise to recognise the conclusions of the expert based on the documents that it presented itself. One of the figures contained in that material simultaneously defined the market size and the volume of blood plasma sold at the time. This quantity was indicated in the proceedings and demonstrated by the defendant - the Czech Republic, which has statutory responsibility in this area. The plaintiff accepted the claims of the defendant regarding these variables, and therefore the facts under j 120, paragraph 4 CPC became indisputable. If the defendant did not agree with Its own data, one would logically Bssume that the arbitrators would be offered other data (again, less logically, leading to a reduction in loss), but no new information has been produced by the defendant.

Just for the record, it should be mentioned that, on page 3 of the expert opinion, Dr. Ing. Lunaka and Ing. Kuchanka in the list of documents submitted by the Ministry of Health of the Czech Republic under No. 1.3.1.9 stated "Opinion of the department of pharmacy and drug regulation in the field of the Ministry of Health Ministry of Health on the legal basis of Ilia requirements for the specified material input data to calculate the evolution of the plasma maiketsref. FAR 1514 of 05.03.2002 (addendum 4)."

The file shows that before the release of the partial award the plaintiffs damages in the application were based on the expert opinion of Dr. Ing. Lunaka and Ing. Knchanka, **i.e.** the amount of approximately CZK 3.814 billion, whereas the defendant argued for damages under the expert opinion of Ing. Horski and Ing. Svoboda, 1.c. about CZK 327 million The arbitration tribunal as originally constituted formed the legal opinion that the lower loss is the undisputed amount mentioned. As is also clear from the observations and assertions by (he defendant, in the next stage of the proceedings it rejected its own procedural claims actually submitted by its own evidence, **i.t.** from expert opinion of Ing. Horski and Ing Svoboda that the defendant itself chase far the expert opinion, which is admittedly quite clear from the documents entered in the file.

With the submission of the defendant the arbitrators concluded that the rejection of the expert opinion provided for by the expert is based on three basic procedural claims:

a) the proceedings have not shown anything that would justify the award of damages to the plaintiff;

b) the expert opinion established by the experts (including those proposed by the defendant) is based only on a "virtual reality" or the claims of the plaintiff and neither has the expert claim has been proven on which the expert based its expert conclusions contained in the expert's report and its annexes;

c) the denial of its own evidence and its own claims.

The legal opinion of the arbitrators is that the defendant is bound by its procedural acts, regardless of who its representative was in the following procedural steps in the procedure done.

With respect to the Office for State Representation in Property Affairs, this is covered explicitly in the law on its establishment. Rejection of the evidence already in the opinion of the arbitrators process is ineffective. In this context, the arbitration tribunal refers to the Supreme

Court Judgement 232/2002 Jc; 21 Cdo 426.2002, under which it "proposes to cowl participant., to provide any evidence, that it may withdraw its procedural act only under the conditions specified in § 4la paragraph 3 of the: Civil Procedure; Ihis occurs when the appeal court is considering the latest proposal for proof, as if the participant never made such a proposal.

221. The arbitrators made during the proceedings an assessment of any evidence that the parties submitted. According to $ 20 paragraph l CPC they are able to assess only the evidence that the Parties provided voluntarily and of course the evidence must not otherwise breach the basic principles of the Czech legal regime. The arbitration tnbunal did next consider it necessary with regard to the state afteT the proceedings of the arbitration awards to apply far assistance under § 20, paragraph 2 CPC to the general court, as proposed by the plaintiff. Be considered that the submitted documentary evidence and expert opinion and its additions could be a sufficient basis for a final decision in die matter.

Because the CPC in its provisions docs not provide a review of evidence by the arbitrators, the arbitrators assessed the evidence in reasonable application of the provisions of Code of Civil Procedure § 132.

In this context, the arbitrator pointed out that although evidence made therein was submitted on 23 December 2004 by the defendant and marked in the Czech translation as "Official record of infringements by the Office of Government Representation in Property Affairs with Mr Larsen/former employee of the plasma unit Novo Nordisk, as/held on 2 July 2004 in Copenhagen/Embassy of the Czech Republic/"(S24b) and "Adjustment to the official record of the Office of Government Representation in Property Affairs with Anders JensavTormeT employee of the plasma unit of Novo Nordisk, es.,1icJd on 2S June 2004 in Copenhagen/Embassy of the Czech RepublicT(S24c), nevertheless their contents were not taken into account in evaluating all the evidence, because the evidence was obtained illegally, and with the cooperation of the Parliamentary Enquiry Commission, as evidenced by both the list of participants attending the hearing as well as the signatures of participants on the last page of documents. The questioning of the witnesses had been attended by the Secretary of the Commission of Inquiry Deputies PhDr. Martin Tulelkovovi.

However, according to reports of the Parliamentary Enquiry Commission of Inquiry its task was to "clarify the (acts in the context of the instigation of arbitration between the Czech Republic and DIAO HUMAN, clarifying the process of law, involving specific persons and entities.". Instead, the Parliamentary Enquiry Commission provided the defendant with evidence, as is also stated in the report itself on page 11 and 12.

222. The defendant asked the arbitrators to ensure fair proceedings. In its submission of 21 February 2006 it can be inferred that, if the requirement is not met and the expert is not heard, it will not be fair proceedings. The expert was given a hearing on 20 October 2007, and the defendant had the opportunity to ask the expert questions ibout the expert opinion and the supplement

At the request the defendant, however, the question arose whether the defendant itself could ensure conditions for fair proceedings.

The arbitrators hold the legal opinion that throughout the proceedings both parties have been given the same conditions, and therefore, the arbitration must undoubtedly be described as fair.

Thc "Report on the findings of the Parliamentary Enquiry Commission regarding the settlement of the Czech Republic with D1AQ HUMAN" of 23 February 2005 (entered in the file) in particular states as follows: "It is not possible to ignore the fact that, as the entire course of the dispute has confirmed, it (Ministry of Health of the Czech Republic • cd Che arbitrators) quite unnecessarily released tens of millions of CZK to the aforementioned expat and professional opinions that differed both in determining the amount of the claim for damages as well as on the period for wiiich the quantification applied. The only thing on which the legal analysis and opinions by a majority concurred, was that the existence of such evidence, which the MoH has submitted, does not conflict with the CR" (p. l0X "In summary, the activities of the Ministry of Health in the ongoing dispute until mid-June 2004, although it was motivated by an effort to limit the threat of loss to a minimum, were at certain times chaotic and disorganised, and the final result must be regarded as counterproductive. It is not possible to understand this, nor reconcile it with the effectiveness of the protection of its interests, why a huge state apparatus, which was represented by lawyers from the legal department of the Ministry, and if necessary represented or supported by retained lawyers hired reputable law firms, in addition to well-paid civil servants." (P. 11).

223. The arbitrators concluded the following facts from the written submissions by the parties, the evidence presented in documents and the expert opinion, including its Annexes, the questioning of the expert, and claims of both parties, and on the basis of these facts came to the following legal opinions.

224. The defendant in its pleadings, especially in the period when it wus represented by the lawyers JUDr. Blazek and JUDr. Novacck, and in fact even when it was represented by the Office of Government Representation in Property Affairs, indicated doubts about the accountability and jurisdiction of the decision of the arbitrators, which were contained in the arbitration awards issued in the previous stage of the proceedings, especially regarding the interim arbitration award of 19 March 1997.

In practice, the arbitration can divided into preliminary arbitration awards, interim awards, apart from awards, final awards, additional awards, consent awards and declaratory awards. According to some opinions, it is also necessary to distinguish between the total and final arbitration awaid (global award) because only the total arbitration award is given for all the claims made.[1] Arbitral awards can be further divided into arbitration awards issued during the course of arbitration, i.c.. until a final arbitration award, and those issued after the arbitration, i.e.. when there is already a final arbitration award. After arbitration only two kinds of arbitration award of possible, additional and review.

The interim award is issued when the arbitrator and the parties think it is useful to first resolve the question whether the asserted claim is not justified, usually on a proposal by the parties when the parties are not certain whether the asserted nght exists or not. Interim awards can only be decided only by the base case, and they cannot be decided on parts of the claim or only some of the claims made and basically not about a merely minor legal question, which cancans an ancillary claim.

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* Cf. e g. Rxxzrhnakjvi, N., Arbitration m InfcmsUoru) md Jomcjiic transactions. ASP1 Pngoe 2002, p. 163.

According to A. Bfciotal4vek "interim or partial awards support the decision to issue a preliminary ruling, and the assessment cannot be expressed in the statement ... but rather the assessment of the preliminary ruling, however, may depend on the decision basis of the claim put forward in the application, which then itself may find its expression in the verdict of the interim arbitration award*.[1] The issue an interim arbitration award docs not terminate the proceedings or the arbitrators mandate under the arbitration agreement and the arbitrators in the arbitration proceedings regime continue their work, and then decide on all claims raised in the final aibitration award, or a partial release of the award on the claims made.

A partial award, as the title indicates, is issued when only a portion of the case is sufficiently clarified. Is it decided to accept a claim or part of one of the claims made. Partial release of the award by the arbitrators does not terminate their mandate, nor the arbitration agreement, and the arbitrators generally proceed with the arbitration and then decide on all claims raised in the final arbitration award, or through the release of another partial arbitration award.

The file contains a copy of the submission of the defendant's the legal representative JUDr Prcsmysl Raban, CSc. of IS June 1998, seeking annulment of the arbitral awards of 19 March 1997 and 27 May 1998, addressed to the Regional Commercial Court in Prague. The file does not contain any ruling on this, and even the defendant has never claimed that the interim or partial award has been annulled by a general court.

The above must lead to the only possible legal opinion that both the interim, as well os a partial, arbitration award, have been accepted by the parties, none of them have been canceled or referred to the tribunal or the general court in accordance with § 31 and § 34 CPC. Both arbitration findings are therefore valid arbitration awards in accordance with $ 28, paragraph 2 CPC.

The arbitration award is the final decision of the arbitrator (or arbitrators) on the substance (i.e. a statement an authoritative non-governmental body - or individual - authorised to decide the matter) and it is accorded the some legal effect as a final court decision. In this case, the final decision is the interim arbitration award on the basis of the claim put forward in a partial arbitration award on the claim advanced. However, the legal effects can be divided into formal (the award is not challengeable by reference) and material fit is binding on the litigants, state and other authorities, in the matter which was decided by arbitration, cannot be appealed and is enforceable after the deadline indicated it). Tire parties in the arbitration agreement negotiated an opportunity to review the arbitration award. The defendant used this possibility and asked to review both the interim, as well as the partial arbitration award. Both awards were then reviewed by the arbitration tribunal and duly upheld.

Given all the above, and notwithstanding that the remainder of the claim during the case was decided by a tribunal in a different composition than that which issued the interim and partial award, and regardless of the defendant's assertion that nothing has been decided that must be accepted in the interim arbitration award, etc. there is no doubt that there has already been on certain legal facts in this case a final decision and the existing aibitration tribunal is bound by those decisions and is required in the final decision in the matter to consider them. Both the

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* Belchlavek, A., Act on Arbnralion Proceedings and Enforcement of Arbml A\uds. Comments, Prague CH Beck 2304, p. 111

arbitration awards are with respect to their subject a res judicata - a matter with the status of a judicial decision.

225. By the interim award dated 19 March 1997 it was finally decided that 1 the claim arising from the requested damages in the amount of CZK 67,500,000.00 for loss to the plaintiffs business name is rejected, and 2 the claims for damages and intangible satisfaction - a letter of apology - are upheld, as regards the basis of entitlements. The right to financial compensation remains to be decided.

Because the defendant, by the submission of 15 April 1997, requested a review of the interim arbitration award, the review of the arbitration award of 27 May 1998 finally decided that 1 the claim for damages referred to in the first sentence of section 2 of the award raised by the interim action of 15 October 1996 the arbitration tribunal is, in terms of the basis of the claim, upheld and the claim to limitation is not justified, and 2 of the claim to intangible compensation - a letter of apology, referred to in section 2 of the award, in the interim action of 15 October 1996 is upheld.

The statements of these two arbitration awards can only leid to the legal conclusion that a definitive decision has been taken on basis of the claim relating to the claim for damages and intangible satisfaction - letter of apology. In addition, the review arbitration award decided that the plea of limitation was not justified.

The arbitrators in Section VIII. of the grounds of the interim arbitration award reached the legal opinion that "it is obvious that the defendant as a state body by its letter of 9.3.1992 restricted competition and violated $ 18 of ZHS. In addition to violations of the provisions of } 42 of the Commercial Code, abuse of participation in competition is regarded as unfair competition and unlawful restriction of competition. Thereafter, in section IX. tire arbitrators reached the further legal opinion: "The fact that the plaintiff was directly affected by the described illegal activities of the Ministry of Health means that the loss is obvious. The connection between the occurrence of the loss and such conduct is proven by the fas message already cited above and dated 18.3 1992, from which it is clear that Novo Nordisk as suspended cooperation with the plaintiff as a result of information contained in the impugned letter of the Minister of Health dated 9 3 1992: Under the provisions of Commercial Code (S3 fin conjunction with § 17 of the Act on Protection of Competition) the person whose rights have been violated or threatened is entitled to pursue the infringer to refrain from this and remove the defective condition. They may also require reasonable satisfaction, which may be granted in terms of money damages and unjust enrichment."

Based on the above it is necessary to reach the legal opinion of the existence of a causal connection between the letter of then Minister of Health MUDr Martin Bojar, CSc. of 9 March 1992, and the loss of the plaintiff as it was decided. And because the Interim award was not revoked by the arbitration tribunal or the review according to § 27 CPC or a general court pursuant to § 31 CPC, which is also a fact undisputed between the parties, the existence of a causal connection between the letter of the Minister of Health MUDr Martin Bojar, CSc. of 9 March 1993 and the loss caused in the plaintiff has been finally decided and is binding for the existing arbitration tribunal's decision. No applicable Law gives (he arbitrators the right to amend or modify the decision or not to consider the legal implications of the final decision b the matter. If the arbitrators decide that the claim is asserted for a legitimate reason, they must also find that a causal link exists.

Regarding the binding decision on the existence of a causal connection there is no consensus belween the parties. The plaintiff argues for the seriousness of this decision sod in its submissions claims that the existence of a causal link has been finally decided, whereas the defendant takes the opposite view and asks the arbitrators to collect evidence about its very existence with regard to the amount of the alleged loss.

The defendant in its submission of 6 May 2003 stared that h remains its position that no competent public authority has ever recognised a causal relationship between the unlawful conduct of the State (Minister MUDrS575cbl03d letter) and the emergence of the so-called loss, which the plaintiff is claiming from the state. The grounds of the partial arbitral award are regarded by the defendant in this regard as unacceptable, ***wrong*** and completely lacking in the necessary arguments. In its submission of 13 June 2003 the defendant again slated that it bad never recognised the causal link between the infringement and any possible loss, and therefore requests that the arbitration tribunal, despite the existence of the partial arbitral award should address this central issue.

The defendant in the course of the proceedings held that the plaintiff had not established any causal link between the letter of Minister MUDr Bojar and the alleged loss and docs not (e.g. in its submission of 21 November 2003), or that a causal link must still be examined in the proceedings continue, in relation to the scope and amount of possible damages, and the defendant believes that the arbitration tribunal has received enough evidence to draw the conclusion that a causal connection between the conduct of defendant and the alleged level and amount of the loss does not exist and objectively cannot exist (in the submission of 6 September 2005).

The defendant, by the submission of 30 August 2004, informed the arbitrators that on the question of a causal connection between the letter of Minister MUDr Bojar and the amount of damages it will submit additional material to the arbitration tribunal. From the claim by the defendant, it is clear that it wanted to return to the earlier evidence phase of the proceedings, i.e.. before a decision on the dispute. By the submission of 6 December 2006 the defendant again raises doubts about the binding nature of the atbitiation awards issued for the subsequent stage.

In the legal opinion of the arbitrators it is unacceptable to decide and seek to prove a condition which has already been finally decided. It must be accepted by the defendant (hat the evidence presented by the arbitrators and expert up to 2004 was not available to the arbitrators back in 1996, when (he existence of a causal connection was decided.

The defendant itl its final proposals maintains the unambiguous conclusion that (he causal link between the conduct of defendant and the alleged level of the loss does not exist and objectively cannot exist. In its view, the plaintiff has failed to submit any relevant evidence that would either individually or as a whole lead to the conclusion that the letter in question of Minister MUDr Bojar, and only this letter, caused the plaintiff any loss.

The members of the existing arbitration tribunal hold the view that the existence of a causal connection between the letter of then Minister MUDr Martin Bojar, CSc. of 9 March 1992, addressed to Novo Nordisk and the loss of the plaintiff has already been finally decided and that this causal relationship existed throughout the relevant time.

226. By the partial arbitration award of 25 June 2002 it was decided that the defendant ia liable to pay the plaintiff the amount of CZK 326,608,334.00 within five days of the finality of this part of the award and that the other parrs of this case including accessories, as well as the costs, will be decided in the final arbitration award. Because the defendant, by the submission of 23 July 2002, requested a review of the partial arbitral award by the review arbitration award of 16 December 2002 it was subsequently decided that the partial award of 25 June 20C2 in the dispute over the aggregate amount of 1,873.874,500.00 CZK, which ruled that the defendant was required to pay the plaintiff the amount of 326,608,334.00 CZK and that of other parts of this case including accessories, as well as the costs, to be decided in final arbitration award, was confirmed.

Even on this partial arbitration award in the next stage of the proceedings the defendant expressed reservations, specifically on the need to demonstrate a method of calculating the lost profits, as determined by the arbitration tribunal. For the existing arbitration tribunal any reservations about the partial arbitration award are irrelevant, because this part of the claim has been finally decided, and the arbitrator informed the defendant that it should voluntarily pay the amount granted to the plaintiff partial under the arbitration.

The arbitration tribunal in connection with the partial final arbitration award took into account the fact that the amount of CZK 326,608,334.00 had already been decided, and this amount would reduce the award of damages.

227. Tl* arbitrators after the second review of the award and subsequent cross-party access were aware that the current state of evidence could not lead to a final decision on the substance because it was not at that time demonstrated that there was a loss, or the amount of lost profits

With regard to the previous access to the defendant to the expert opinions submitted by the experts lng. Kochanka and Dr. Ing. Lunula and Ing. Hanski and Ing. Svoboda that the defendant did not accept, even though the first two experts agreed with the plaintiff, as evidenced by the minutes of meetings of representatives of the Ministry of Health and JUDrJiri Orsula of 9 April 2001, signed for the Czech Republic by JUDr Michal Pohanck, 1. Deputy Minister of Health, and the other two self-selected as the expert and the expert advice for which they had paid compensation amounting to CZK 5,512,500.00 (according to addendum no. 22575/2004 - entered in the file), the arbitrator considered the most appropriate way to review the appointment of the expert (or expert) to be mutual agreement of the parties about his person, in order then in determining the amount of lost profits to avoid any objections to the arbitrator as subsequently resolved by the expert on whose person the two sides had previously agreed.

There can be no doubt that this dispute is factually as well as legally complex with regard to the parties' claims. The arbitrators must under § 30 CPC appropriately apply the provisions of Code of Civil Procedure § 136, and authoritatively determine the amount of the claim, i.e.. the damages incurred. This privilege, however, the arbitrator lias decided not to use and has permitted the appointed expert to determine the amount of damages - lost profits.

According to 5 125 OSR, proof can in particular take the form of an expert opinion. The expert establishes according to § 127 paragraph I CPC, whether the decision depends on facts which require an expert opinion. And such a requirement occurred after the release of interim and part of the award in this case, as it was not already possible to take a decision on the final claim as to

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the reason BO that il remained for the arbitrators to decide as to its amount And for this they required ao expert report.

Accordingly, live arbitrators, by Resolution No. 1 of 28 May 2D03, instructed the parties to agree within a specified period on the person (persons) of the expert who would draw up the expert report. The plaintiff expressed willingness to select the expert in such a way, whereas the defendant, in the submission of IS October 2003, stated explicitly that "it is not willing to agree on the expert" and their negative opinion remained, although the arbitration tribunal called on them on many times to negotiate with the plaintiff about the person of the expert (experts), until June 2004 when at least it was proposed that the court should select the expert from among three companies: 1) PriccwatcrhouseCoopers Czech Republic, sro 2) E 4 Y Valuations sro and 3) KMPC Czech Republic, sro. The plaintiff abandoned its request for the expert appointed to be a foreign person and by the submission of 22 July 2(X)4 told the arbitrators that it proposed that the expert be appointed as E A Y Valuations sro and demanded that expert opinion should have verification of non-domestic authority from among experts that deemed adequate by the method used. Thus, although the defendant proposed the expert, it was confident of its professional qualifications for the expert opinion on the proceedings. *

The arbitration tribunal, on the basis of a proposal by the defendant and the subsequent consent of the plaintiff on 30 July 2004, appointed E & Y Valuations, sro as the expert.

On the procedural obligation the arbitrators gave Use parties time to fiie an application on the questions to be put to the expert. Both parties made use of their right Io Influence the formulation of questions; the defendant, in the submission of 30 August 2004, proposed the wording of nine questions and the plaintiff, in the submission of 30 August 2004, proposed the wording of seven questions. The arbitration tribunal, in the interests of procedural economy, decided to accept most of the parties' proposed questions, so these questions could not be subsequently asked for an expert opinion, which would lead to the need to supplement the expert report, even though some of the questions designed by the defendant were directed to an area already lawfully decided The remit was given to the expert on 9 September 2004. Some proposed questions were considered by the arbitration tribunal to be legal issues, the evaluation of which is not established by expert, and therefore were not asked Accordingly, the arbitrator acknowledged the concession by the defendant, contained in its submission of 6 September 2003, that the expert opinion should answer the questions formulated by the arbitration tribunal, which were questions to some extent different from those that the defendant considered crucial for the correct assessment of the case.

The defendant raised a number of reservations against the expert opinion. In its view, the expert in several passages in the opinion clearly formulates findings not influenced by studying the sources, whose accuracy and authoritativeness it is not able to examine. This reduces the informative value of his expert opinion. It also has formal defects. The basic cause of the defect of the report, in the opinion of the defendant questions, which leads to a formulation that complements the work of the expert opinion, is that the wort addresses issues of legal nature and finally speculates beyond the actual evidence in the file. The defendant's answer to question 9 - the requirement for expert determination of the amount of loss In the form of lost profits - is a requirement to answer a legal question. The result of the expert examination, however, cannot be specified In legal questions. That belongs exclusively and solely to the arbitrators. The defendant also raised doubts about whether this does not really involve lost profits, but only profits in the abstract meaning of § 381 Commercial Code.

With respect to the reservation* which are inchidcd in the analysis drafted in collaboration with Deloitte Czech Republic BV, the defendant takes the view that to clarify the contradictions arising from expert opinion it cannot be considered as evidence to confirm the soundness of the claim made, both in terms of reason and in amount

The opinion of the above-mentioned company is not regarded by the arbitrators as relevant for dispute because it is not an appointed expert. The arbitrators in this opinion regarded it as other documentary evidence submitted in this case.

According to the defendant the expert opinion has a number of substantive and methodological defects and irregularities and in some places is based only on hypothetical considerations. Without questioning the expert and a complete and detailed findings of its expert opinion it is the opinion of the defendant in this cose that it is not possible to take substantive decisions that will be sufficiently demonstrated. The defendant alleged that in particular the expert had answered legal questions, although it submitted such questions itself, or, conversely, that it did not provide a causal link, although it was again a question of law, which in this case only the arbitrator is authorised to decide. Reservations on the expert opinion and its additions are raised by the defendant in its final proposal.

The plaintiff also raised a number nf reservations against the expert opinion. These reservations were not such as to find that the expert opinion was useless for the decision of the arbitrators on the claim for damages. Finally, the plaintiff was released from the conclusions of the expert and changed its application by reason of the response of the expert to question *9*.

The plaintiff demanded that the methods used in drafting the expert opinion should be verified by a foreign expert - Ernst Sc. Young. This was the document "Representation on the methodological verification of the expert opinion" of 10 August 2005, signed by Ernst Sc. Young Ltd.., Blcicherweg 21, CH-Zurich, Louis Siegrist and Thomas Stenzcm, who confirmed that the method of drafting the expert opinion was found to be in line with international practice in similar cases.

During the expert questioning at the oral hearing on 20 October 2007 at the express question of the arbitration tribunal, whether expert opinion was prepared by an expert as well as the additions to it and whether the conclusions of its expert were produced by an authorised representative, expert was released from the drafted expert report and its annexes, and its expert conclusions were drawn.

Given that the arbitrator with respect to a particular stage cf the proceedings allows certain facts which have already been finally decided to be considered in the expert opinion, including its annexes, and to form a sufficient basis for the final decision an the amount of loss in the form of lost profits, it should be noted that the expert conclusions will be evaluated as other evidence presented in these proceedings by either party. On the objection by the defendant that the expert did not proceed always according to its wishes, the arbitrator will only state that arbitration is less formal than proceedings before ordinary courts. In his view, the procedure of the expert was in line with relevant legislation.

The arbitrators do not consider the conclusions of the expert report and its annexes, with the defendant, as "virtual reality", but a qualified assessment of the technical issues, especially the amount of damages incurred, on which on the basis of its own beliefs about the legitimacy of the claim by the plaintiff it has relied an the application and decision for damages.

228. The interim award established the existence of a causal connection between the letter of Minister Ml!Dr Bojar and the loss and a decision on tbe amount was left for further proceedings. In this final arbitral award the arbitrators must then decide, given the proceedings after all parties have proposed evidence, whether the amount of damages incurred by the plaintiff has been adequately demonstrated.

In the legal opinion of the arbitrators it is necessary to distinguish between tbe actual occurrence of loss and the amount of damages. The fact that a party proves a loss, does not yet mean that it also demonstrates the amount, which is also what the arbitrator has already stated in the course of these proceedings. Because of that loss and because the application of the plaintiff was not subject to limitation, it has been finally decided after the previous findings by the existing arbitration tribunal and the fulfillment of the above, given the proof of the amount of damages, to take a resolution on the amount of damages of the plaintiff.

The arbitration tribunal after the release of the interim and partial awards, which would be final and binding decisions, can take decisions only on the final amount of compensation applied, which, moreover, is also established by the Parliamentary Enquiry Commission in its Report of 23 February 2003 on page 9 "At the current Stage of the dispute tbe arbitration tribunal is bound by the final arbitration award of previous tribunals, and therefore is authorised to act only on the final amount of compensation."

229. The plaintiff formulated its final statement of claim In its final proposals of 6 March 2008 and after partial withdrawal of the claim of 20 June 2008 applied for:

- compensation in the form of lost profits for the period from I July 1992 until I May 2000 in the amount of CZK 3,444.171,666.00,

- total interest on tbe sircars for the period until 30.6.2007 in tbe amount of CZK 7,487,684,791.00. with total of damages and interest for late payment from 30.6.2007 in the amount of CZK 12,931,856.457.00,

- procedural and other costs;

- arrears interest on the amount of CZK 2,051,033.00 a day, starting on 1 July 2007 until payment;

- dispatch of a letter of apology by the defendant to the plaintiff with the specified text;

- a public apology in the domestic media, all within one month of the final arbitration award.

Originally, the plaintiff sued for the amount of CZK 67,500,000.00 as compensation for damage to the plaintiffs commercial reputation. This claim was rejected by an interim award of 19 March 1997.

In addition, the plaintiff originally claimed entitlement to compensation for actual damages in the amount of CZK 21,000,000.00.

Finally, the plaintiff originally claimed payment of the amount of CZK 91,300,000.00 as financial satisfaction.

Although in the final proposals of the plaintiff both the list claims were found to be not applicable and during tlx procedure is has withdrawn the claim for financial compensation in the plaintiff's submission of 7 April 2000, the arbitration tribunal still had to decide about those originally applied claims.

230. The decision on the matter with regard to the asserted claim for damages - lost profits - is subject to the legal regime of § 373 and following of the Commercial Code. According to the relevant provisions of the Commercial Code for entitlement to compensation these basic conditions must be cumulatively met;

- Breach of legal obligation;

- The real loss occurred;

- Causal link between the breach and the loss;

- The absence of circumstances excluding liability;

- Predictability of the loss.

In this context, the question arises, what has been decided by the interim award, or whal conditions to establish compensation, according to the interim arbitration award, are met. The plaintiff believes that the interim award decided on the satisfaction of all conditions except the amount of loss. In contrast, the defendant in its pleadings steadfastly maintained that the plaintiff has not demonstrated tliat there was a causal connection between the letter of Minister MUDT Bojar and the plaintiff's allegedly suffered loss or that the plaintiff has sustained any loss at all. These objections regarding lack of causation, however, the defendant in the opinion of the arbitrators was required to apply at an earlier stage in the proceedings, which preceded the issue of an interim arbitration award, and not at the stage of the proceedings, when a final decision was taken on the existence of a causal connection and the loss that the plaintiff had suffered.

In the legal opinion of the arbitrators in the interim award it was finally decided that there was a breach oflegal duty by the defendant that (he plaintiff had actually sustained a loss and (hat there was a causal link between the breach cf legal obligation and the loss. The existing members of the arbitration tribunal are convinced that it was also decided that there are no circumstances excluding liability by the defendant and that the loss was foreseeable. Nevertheless, the arbitrators will address these last two conditions again in the next section of these grounds.

231. According to the defendant, after the letter of Minister MUDr Bojar to Novo Nordisk the plaintiff did not take any action under \ 384, paragraph 1 of the Commercial Code, which would have justified the action or served to avert or mitigate the loss. The circumstances of the case are nevertheless not such that action against the threat of loss was not possible. If the plaintiff fails in its obligations of mitigation and it has even demonstrated the existence of circumstances that exclude its liability for failure to fulfill the obligation, the loss caused In its responsibility and not that of the defendant

The provisions of § 384 of the Commercial Code contain a special provision in relation to § 417 Civil Code. The obligation to avert imminent loss is imposed by the Commercial Code on tlie person who is threatened by the loss. It is required to take measures necessary to prevent or to mitigate loss, if the threat of loss is detectable (e.g. on the basis of a report, which violates or is known to violate their obligation). The type and extent of necessary measures will be governed by the circumstances of the case. If the plaintiff has failed to fulfill its obligation to avert imminent loss, the liable person is not required to compensate the loss caused.

The arbitrators in this context do not accept the defendant's opinion that the circumstances of the case were such that the plaintiff could intervene against imminent loss. On the contrary, the plaintiff could not intervene against the imminent loss in any way with respect to the fact that the suspension of cooperation between it and Novo Nordisk was due to administrative interference by the defendant. After the dispatch of the letter cf Minister MUDr Bojar to Novo Nordisk none of the persons authorised by the defendant in Prague took action, as is dear from the evidence, and it is also not for the plaintiff to do so, although it exercised considerable Initiative for this purpose, even in relation to Novo Nordisk.

In Use legal opinion of the arbitrators with regard to the circumstances of this case, the plaintiff has made every effort to discharge the obligations of mitigation, which the commercial code imposes on it in this area.

232. The defendant further argued that under § 379 of the Commercial Code the victory may be granted damages in an unpredictable amount, assessed at the time of the failed obligation. It is for the plaintiff to prove that its alleged loss was foreseeable The plaintiff did not focus at all during the proceedings on demonstrating that it had such knowledge regarding the market blood derivatives and blood plasma, as the Minister of Health MUDr Bojar possessed at the time, so that after the assessment it would be possible to say with confidence that this knowledge loss was caused by the letter in question which the action far the loss claimed to anticipate or predict.

According to the general regulations of the Commercial Code, compensation must be paid far all damages except unpredictable loss. Any loss includes both real loss and also lost profits. Loss under Commercial Code means the unpredictable loss that exceeds the loss that the contractual relationship at the lime of the liable party envisaged as a possible consequence of breach of its obligations or anticipated that it was possible to predict with regard to the facts, which al that time the liable party knew or ought to know with the usual care. This loss cannot be compensated.

To accept the legal opinion of the defendant would mean that live defendant could not have anticipated the loss caused by the letter from Minister MUDr Bojar, which would mean to assign all employees of the Ministry of Health of the Czech Republic under Munster MUDr Bojar utter incompetence and lack of prerequisites for their function.

Although there is not a contractual relationship between the parties, the defendant in the legal opinion by the arbitrators at a time when the letter of Minister MUDr Bojar were sent to Novo Nordisk, with the usual care should have been able to predict the possible effect of this letter and that be could cause loss to the plaintiff. The Ministry of Health had its legal department, which could assess the legal consequences of this particular letter competently.

In the legal opinion of the arbitrators the defendant in the proceedings failed to demonstrate the existence of so-called exempting grounds, i.e. circumstances which exclude its liability in this matter under § 373 of the Commercial Code, so that for their existence it would not be required to reimburse the plaintiff the claimed damages.

233. The arbitrators had to deal with the question of how long the defendant took responsibility for the alleged loss of profits the plaintiff, i.e. determine the "decision time".

The review of the arbitration tribunal in the reasoning of the review of an arbitration award of 27 May 1998 notes that in terms various progressive steps to cover loss of profit will be further evidence of the attempt to clarify whether the non-renewal of cooperation between the plaintiff and the Novo Nordisk is still the result of the original letter of Minister MUDr Rojar, or whether the final termination of transaction relations between the two companies is the result of market trends or general entrepreneurial risk.

The plaintiff after the interim review of the award and the parial award changed its pica and asked for proposals on part of the award, which the defendant was instructed to pay in the amount CZK 199,313,059.00 with interest at 13.802% pa for the period from 1 November 1995 to payment and the amount of CZK 158,786,941.00 with interest as 13.538% pa for the period from 12 November 1996 to payment. In the partial arbitral award of 25 June 2002 it was decided that the defendant is required to pay the plaintiff the amount of CZK 326,608,334.00.

In Justification of the partial award the arbitrators find that the start of the loss is certainly 1 July 1992, since at the end of June 1992 the plaintiff still continued cooperation with the company Novo Nordisk. The question arises of the causal relationship of tori and damages, and the arbitrator relied on the fact that in May 2000 halted operation was of (he line for developing derivatives. Stopping die operation of the line is probably that fact that interrupts the causal chain. The arbitrators in calculating lost profits started from the expert opinion of Ing. Honki and Ing. Svoboda who quantify loss of profit in the amount of CZK 358,100,000.00, which reduced by its own calculation to the amount of CZK 326,608,334.00.

A review by the arbitration tribunal of the the reasoning of the review of the arbitration award of 16 December 2002 comes to the same legal conclusion, namely, that the onset of loss is I July 1992, since at the end of June 1992 cooperation between the plaintiff and the company Novo Nordisk still continued, and a causal relationship between the infringement and the gradually increasing loss was not interrupted by any act of the parties or other factors ind is completed in May 2000, when the closure of manufacturing lines for the development of blood plasma within Novo Nordisk takes place.

The arbitration tribunal in the present composition came to the legal opinion that the proceedings have shown that the onset of loss is due on 1 July 1992 (at the end of June 1992 cooperation between Novo Nordisk and the plaintiff' still continued) and the existence of a causal connection (the relevant period) expired on 30 May 2000, with the closure of production lines of Novo Nordisk for the development of blood plasma. The arbitrators came to the same legal conclusions regarding the relevant period as (he previous partial arbitration tribunal in the arbitration award and the review of the arbitration tribunal, by which the partial arbitration award was reviewed and confirmed.

234. In the legal opinion of the arbitrators the course of this arbitration has shown:

a) What was the state of the Czech healthcare system before 1990 in terms of blood derivatives, their inaccessibility and the lack of production despite their urgent need. The laboratory production experimented only by the state L'SOL Institute (later SEVAC). The defendant itself presented sufficient documentary evidence (in the file in Y59a below) for the opinion of the arbitrators.

b) The presence of Diag Human AO from the mid-80 of the last century, as the international as well as a monopoly contract fractionator of NDR in negotiations with the Czechoslovak health submission, which is documented by tbc Framework Agreement on Cooperation initialed in March 1990, which related to the formation of a market for blood plasma in the form of indirect contract fractionation, in which Oiag Human was responsible for investments in transfusion services and plasma development for the registered products and training for the defendant, which was further proved, among other things, by any Minutes of meetings with Novo Nordisk and protocols of the safety authorities of that time.

c) The fact that the commercial fractionation model contract, based on the value of compensation cost for the blood plasma fractionator, was required by die state health administration of the defendant in 1990, which also shows the tender conditions of the first defendant between September 1990 and die end of the evaluation committee, indicates that there was an indirect fractionation model contract of the plaintiff, this model was offered by the Czech medical facilities and that it was a model not only advantageous for the defendant, but the only one possible possible in terms of funding and technological backwardness. The proceedings have refuted (he objection by the defendant that it was only a hypothetical model of contract fractionation, with die documents of international organisations (WFH in 1995 and 1998, which explicitly assume contractual fractionator), written testimony of Mr. Patrick Robert, CEO of MRB, of 16 June 2006 and the written testimony of Mr. Jdrgen Reich of 15 October 2005 and 15 November 2005. The plaintiff maintained that the fractionation contract model was prepared to meet the condition "of the Czechoslovak legal entities" and thus was also evaluated by the defendant (see Report of the Evaluation Commission). The fractionation model contract was backward with regard to the funding and technologically for health care in a freely convertible currency for the defendant, because at the time it was unable to make massive investments in the transfusion service and retraining of medical personnel, which is also shown by the comment of Dr Kulich of 18 February 1990, the above testimony of Patrick Robert and the written testimony of MUDr Boris Bubenik head physician of 22 June 2006, MlJDr. Milos Bohonek of 30 June 2006 and MUDr. Jaroslav Molacov of 30 June 2006 and 23 June 2005. Similarly, it was shown that in the fractionation model contract the position of the fractionator is stable.

d) The fact is that the plaintiff possessed all the necessary administrative permits of the defendant to buy blood plasma, blood plasma, export, import products from blood plasma, mainly as a distribution warehouse and a certificate of good manufacturing practices in the distribution warehouse, and that under all these conditions the plaintiff was treated as a priority on the Czech market. All necessary administrative permits or certificates of the plaintiff in the proceeding have been submitted as public documents, which are entered in the file. The proceedings have established that the plaintiff participated in the primary market since early 1990, when it was founded as a domestic legal entity, acquired the necessary permits for all phases of commercial activities in the field of representation of the producer Novo Nordisk in the registration procedure and registration of products, establishing distribution warehouse and the achievement of a certificate of GMP training of personnel of the Czech health services by negotiating cooperation agreements with local hospitals and on the basis of delivery of

technologic* for the production and preservation of blood plasma, which is also shown by an administrative decision on GSP competitors, issued by the defendant and communicating well the conditions of the competitors of the plaintifT in the domestic market.

The proceedings have discredited allegations by the defendant that the plaintifT did nol conduct in the Czech Republic any business transaction, not least through tax documents the plaintiff from die years 1990, 1991 and 1992, customs documents of export and import of plasma products and technologies, and accounting documents of the plaintiff. Similarly, the claim of the defendant was refuted that the plaintifT not properly form part of the transfusion network side of the defendant's necessary technology. The proceedings have demonstrated that the plaintiff equipped 14 transfusion technology stations, which the Ministry of Health has accepted without comment.

e) The fact that the plaintiffs competitors for the major part of the qualifying period were present In the market without having met the basic administrative requirements for trading, without having falfillcd the conditions of tender by the defendant and relied on fake data on (he productivity of production (both product yield and the cost of production) and the resulting falsified assumption for imports to the country of origin all products from Czech plasma. The defendant itself presented evidence contrary tn its claim that the competitors returned to the country of origin all production of Czech plasma. This is shown by the official correspondence between the Ministries of the defendant, under which the products in the country of development are obtained in favour of competitors only organised by the defendant, competitors and report on export and import of raw materials and products at the time.

0 The fact that the plaintiff up to the unlawful exclusion had built up the market of the defendant on the primary market with the blood plasma at its own expense and in keeping with the compensation scheme and the primary market, whose size is determined by the extent of its investments in Czech transfusion services, with the competitive priority of its own business, and its business was lawful because it possessed all the necessary permits, which was shown in particular by the agreements on cooperation in developing blood products with twenty domestic hospitals and the costs of technological equipment

g) The fact that the business arrangements of the plaintifT were significantly better than the Czech contractors, competitors that the plaintiff achieved throughout establishing a higher profit than possible before the plaintifT applied and that in the primary market in the Czech Republic at the time there were no domestic competitors. The proceedings have demonstrated that the plaintiff was able to demonstrate, after a period in comparison with competitors, that it had the lowest selling prices of domestic products to hospitals and the highest purchase price of plasma from hospitals, returned the highest number of products and value back to the Czech Republic in unpaid variants for all products considered. Similarly, it was shown in the proceeding, that its alleged competitor ÚSOL (now SEVAC as) had never registered the relevant products, almost all the time decide not hold a certificate of good manufacturing practices and that its alleged share in the consumption of blood plasma is completely implausible. It has been shown that SEVAC was used as a storehouse of raw material for competitors, but for most of the qualifying period did not have the necessary permits for storing blood plasma.

h) The fact that the plaintiff enjoyed in the country a competitive advantage over its competitors, which results mainly from the logic of the primary market, which reflects the stability of the contractual position of fractionator. This is the conclusion of the expert. It is an

indisputable fuel that the Czech primary market remained all the time occupied by two favoured competitors, which is evidence of thi9 characteristic on the Czech market and also similar cases in other countries of comparable parameters, where a stable position of the fractionator is confirmed in the analysis analysis of MRB and assumed by Patrick Robert The conclusion of the 100% share of the plaintiff in the Czech primary market at the time is not hypothetical, but is fully supported by the evidence available.

235. The arbitrators in deciding on the amount of the loss started from the conclusions of the expert in its expert opinion and its supplements, because the expert was appointed by the arbitration tribunal in particular to determine the amount of lost profit, as is also dear from the wording of question 9. Unlike the dcfewlant, the arbitrators believe that question 9 is not a legal matter, but matter for the expert for whose answer the expert was appointed, aixl the expert remit was determined in this way.

Because the expert, though be was instructed in this direction in the expert remit, did not provide the specific, or the most likely amount of loss of profit, the arbitrators can have free consideration of lost profits alone, while relying an the expert opinion and its tfiditions. Although the arbitrators, without any doubt, believe that they were given by the expert appropriate under conditions for determining the amount of lost profits by variant 1A, the amount of lost profits by Valiant II B, i.e. that used the amount of CZK. 4,416,325,000.00, to which the expert concluded in "Additional answers to individual questions of the expert opinion pursuant to Rcsolurion No. 3 of the arbitration tribunal, 19.9.2006" of 16 May 2007 which with its supplement forms an integral part of the expert opinion.

In the legal opinion of the arbitrators this is not about profit abstract, hypothetical or virtual, as believed and argued by the defendant, but the profit that the plaintiff could have achieved if there was no unlawful interference by the defendant. A claim for damages in the amount awarded is no doubt relevant under the substantive law.

When deciding disputes in international investment arbitration under bilateral agreements on protection and promotion of investment or the Convention on the Settlement of Investment Disputes between Suites and Nationals of other States in the year 1965 (Decree No. 420/1992 Coll.) before the International Centre for Settlement of Investment Disputes, it is the established practice that the final amount that the defendant must be required to pay a foreign investor should not be damaging to the state's national budget. Although this is not, as mentioned above, a substantive dispute with an international element, the amount awarded for loss of profits does not in any way jeopardize the budget of the Czech Republic and even its economy. The defendant itself has claimed that h is not a significant amount.

236. In the partial arbitral award of 25 June 2002 it was decided that the defendant is required to pay the plaintiff the amount of CZK 326,608.334J00, and between the parties is not disputed that this amount was paid by the defendant to the plaintiff. Accordingly, the awarded amount must be deducted from the final amount of damages found and the proceedings can then be closed.

237. Given that the defendant, in particular, has raised several objections relating to the claim limitation of the plaintiff the arbitration tribunal has hod to deal with this objection.

As follows from the reasoning of the interim arbitration award of 19 March 1997, the limitation shall be governed by provisions of the Commercial Code, of which it can be stated that on the

application of the provisions of the Commercial Code, or in the proceedings far the commercial relationship, there is not any dispute between the parties, so that it is necessary to follow the provisions of § 397, fT Commercial Code.

Point IX of the grounds of the interim arbitration award includes in particular the finding of the arbitrators that "Given all these facts the arbitrators came to the irreversible conclusion that the claims for damages am not confidential. The defendant subsequently requested a review of the interim arbitration award, and among other reasons for its objection indicated a review of limitation. The review has come to the legal opinion that it is necessary to apply § 398 of the Commercial Code, and in the present case, the limitation period commences on 18 March 1992, i.e when the plaintiff learned of the termination of cooperation between it and Novo Nordisk. According to the review of the arbitration tribunal's action in the arbitral proceedings limitation prior to the expiry of the limitation period and the ohjection of limitation raised by the defendant is unreasonable (see detailed justification in V of the grounds of the review of the award of 27 May 1998).

Accordingly, the arbitration award in a review of 27 May 1998 originally decided that there is "no reasonable objection of limitation*.

The right to object for the debtor is a subjective limitation law, arising on expiration of the limitation period subject to limitation. The limitation period will be running front the date when the right could be exercised for the first lime. This date is generally considered the date when the nghl could be exercised in a general court (or permanent court of arbitration or the arbitrators), in which it could could have been brought. This is why the beginning of the limitation period referred to by the Latin word actio nata (or action bom). It is therefore a matter of when it could be sued for the fust time. In the case of such uncompleted debts it is possible to sue on the day after its due date.

In the case of situations governed by the Commercial Code, the limitation period is four-year (§ 397) and runs from the date when the victim learned of the loss and who is required to pay compensation, and it will end no later than the expiration of ten yean from the violation of the legal obligations (§ 398).

The limitation period is dependent on knowledge of the loss the victim and who is responsible for it. Because the loss is quantified in monetary loss, it is derived from knowledge by the victim of the loss quantificatioa These are the conclusions of judicial practice in the opinion already published under No. 3/1984 Collection of coiart decisions and opinions, and this view still persists. For example, the ruling of the Supreme Court case no. 33 Cdo 79/2002 held that the victim learned of the loss, when he learned of the illegal ad of the loss, which he created in its wake and its scope. Individual claims that arise and grow over time (e.g., loss of profit) can be subject to limitation only if the victim told that they had been subject to judgement even longer as in a decision published under No. 38/1975 collections cited above). Only in passing, this ruling is again and again referred to as still applicable, most recently apparently in the Supreme Court case no. 3 TDO 31/2007: *In consideration of when the victim learned of the loss, we must start from a proven knowledge of the victim about who caused the loss, not only from its supposed knowledge of the loss. The beginning of limitation essentially defuses the situation when the victim learns of the loss caused (not only unlawful act or loss event) and who is responsible for it "). „ Knowledge of the loss need not but often wilt fall outside the time (period) of the loss, but often occurs latex. " Cf. again the cited Supreme Court case no. 33 Cdo 79/2002).

As it has already been finally decided that the claim for damages asserted by the plaintiff is not subject to limitation, only the arbitrators can find that the amount of loss was known to the plaintiff (acquired knowledge of it) in addition to the amounts raised in the application and subsequently extended by up to the expert opinions, that were used in these proceedings (ie. Dr. Ing. Lunaka and Ing. Kochanko, Ing. Ilorski and Ing. Svoboda as well as the judicial expert).

Knowledge of the debtor (i.e. the defendant) of the amount of loss has legal consequences for the application of default interest applied on the individual amounts for loss of profits (see below).

The arbitrators with respect to the earlier final decision on the claim by the plaintiff for damages - lost profits - found that it is not subject to limitation, and the present tribunal is bound by that decision.

238. With respect to the fact that in the past the defendant has made payment tn the plaintiff for damages, the arbitration tribunal had to address the question of on what legal grounds the amount was paid, i.c., what amount and why the defendant paid the plaintiff.

In the partial arbitral award of 25 June 2002 it was decided that the defendant is required to pay the plaintiff the amount of CZK 326.608.334.00. The arbitrators in determining the amount of lost profits relied on the expert opinion of Ing. liorski and Ing. Svoboda. Between the parties is not disputed that this amount was paid by the defendant to the plaintiff.

The arbitration tribunal must therefore determine the amount of damages - lost profits from this undisputed fact between the parties and based on the amount awarded for each year of the relevant period, on the following basis:

Year	partial award	final award	difference
1992	0	119,116.000	119.116.000
1993	30,800,000	488,406,000	457.606.000
1994	46,400,000	626,581.000	580.181,000
1995	64,600.000	755,992.000	69U92,000
1996	61,500,000	733,465.000	671,965,000
1997	58.000,000	675,039,000	617,039,000
1998	29.500,000	515.936,000	486,436.000
1999	27,100,000	385,962,000	358.862,000
2000	12.191,666	115.828,000	103,726.334
Total:	CZK 326,608334.00	**CZK 4,416325.090.00**	**4089716334,-CZK**

239. The plaintiff claimed arrears interest on lost profits. With respect to the plea of limitation which it has against the defendant it claimed the right to default interest raised, and the arbitration tribunal hod to address the question of whether, and If appropriate, from when this claim is subject to limitation for the plaintiff. The fact that it was finally decided that a claim for damages is not subject to limitation, cannot be expanded to justify arrears interest.

Under § 369, paragraph 1 of the Commercial Code, a debtor who is in arrears in meeting financial obligations or pari of them is required to pay the outstanding amount of default interest. In this case, for the loss of profit. That, of course, the debtor cannot knew and cannot perform without the assistance of (he victim can be counted against him. So long as the amount of loss is not determined and not notified to the debtor, the debtor could not be subject to a compensation claim. Basically, the point is that the creditor (ix. the injured party - the plaintiff) failed to provide any assistance necessary to meet (l.e. the debtor - the defendant - has not informed of the amount of their claims, because in some stage of the proceedings is itself knew). This does not change the fact that it did not communicate it in such a way as to provide assistance, without which it could not be authorised to receive compensation for damages. Failure to provide necessary cooperation is defined by the Commercial Code, however, in § 370 as a delay, while in § 523 of the Civil Code provides that "**for** the time of delay of the creditor the debtor is not required to pay interest"

The legal opinion of the arbitrators is therefore that the plaintiff as a creditor is entitled to arrears interest only from the day following the date on **which the defendant as a debtor learned of its rights (and thus given the necessary assistance to meet the debt).**

With the expansion of the application of 2 fuly 2007, submitted to the arbitrators on 13 July 2007, the plaintiff demanded interest for the period to 31 July 2007 in the amount of CZK 7,487,684,791.00 and arrears interest in the amount of CZK 2,051,053.00 a day, starting on 1 August 2007, but it did not specify how the amount applied to arrears interest was reached.

The plaintiff claimed interest for late submission of 8 December 2007 and to demonstrate their specifications attached the table, "Calculation of default interest between the Republic and Diag Human.". The calculation dearly shows that the plaintiff relied on the level of profit set by the expert in variant I.A. The plaintiff also corrected a clerical error from the submission of 2 July 2007, which related specifically to the arrears interest, in the fixed amount of arrears interest demanded by 30 August 2007, namely the daily amount of I July 2007 until payment. The arbitration tribunal accepted the action change as corrected.

The arbitration tribunal had to consider first whether default interest for the plaintiff applied in the proceedings and particularly at which stage of the proceedings. From the above findings, it is dear that the plaintiff changed its application several times after the commencement of the arbitration proceedings, even after the interim arbitration award.

In the submission of 15 October 1996 {delivered to the a/\itrators on 21 October 1996) for the payment of damages totalling CZK 1,873.874,500.00 the plaintiff is not claiming arrears interest

In the application of 15 October 1996 (delivered to the arbitrators on 31 October 1996) for the payment of damages totalling 1,965,175,500.00 CZK. the plaintiff is also not claiming arrears Interest.

In the submission of 17 December 1996 (he plaintiff amended the ground, claiming no arrears interest.

In the submission ofl0 February 1997 the plaintiff brought an action for settlement of CZK 2073938880.00 with accessories and applied for arrears interest.

The submission of 10 September 1997 extended the plaintiffs claims, with arrears interest at the rate of **18%** per annum on the outstanding amount of tfie request to pay under § 369, § 735 and $ 502 of the Commercial Code.

In the submission of 17 February 2002 the plaintiff aougbt arrears interest 15.333% per annum for the period from 1 November 1995 to the payment of the amount of CZK 199,313,059.00 with 14.876% per annum fur the period from 12 November 1996 to the payment of the amount of CZK 23,231,361.00.

In an undated submission lodged by the arbitrators on 17 April 2002 the plaintiff sought arrears interest at 15.333% per annum for the period from I November 1995 to payment on the amount of CZK 198 523 059.00 at 14.876% per annum for the period from 12 November 1996 on payment of the amount of CZK 23,231,361.00.

In the submission of 7 June 2002 the plaintiff sought arrears interest at 15.333% per annum for the period from I November 1995 to payment on the amount of CZK 199,313,059.00 at 14.876% per annum for the period from 12 November 1996 to payment on the amount of CZK 23,231,361.00.

In the submission of 11 June 2002 the plaintiff sought arrears interest at 13.802% per annum for the period from I November 1995 to payment on the amount of CZK 199,313,059.00 at 13.538% per annum for the period from 12 November 1996 to payment on the amount of CZK 158,786,941.00.

In Section 3 of the partial award the arbitrators decided that the case in other parts, including accessories, would be decided in the final arbitral sward. The plaintiff was awarded by the finding only the amount of lost earnings, net of interest on late payment as decided in the final arbitral award. In paragraph 2 Section IV in the grounds of the partial award, the arbitrator slates: "Given that there is currently a derision on only part of the asserted claim, the arbitrators do not consider the award of arrears interest on the partial award to be appropriate. The statutory arrears interest will be derided in the final arbitral award, as well as the costs.".

The plaintiff in a submission of 20 June 2008 concludes that since the assertion by the defendant of the right to accessories, and then the extension of the application for relief, did comply with the statutory requirements of certainty and intelligibility. In this respect it refers to

a comprehensive legal assessment on this issue produced by the Supreme Court of the Czech Republic in case No. Cpjn 202/2005 (decision of the courts in matters of arrears interest), in particular ad-IV. below:

- *I. Arrears interest which becomes payable only with a future release (issue) of judicial decisions Is an inherently recurring benefit under the provisions of the Code of CM Procedure § 154, paragraph 2.*

- *II. Arrears interest due for the period up until the date (of issue) of the decision of the court granted in the statement of Us decision to either quantify the exact amount, or indicate the amount (rate) in percentage terms and the period for which this amount must be paid,*

- *111. Arrears interest determined under the provisions of § I of Decree No. 14Z'1994 Coll. Even in the wording of Gcrrernment Regulation 165/2005 Coll which becomes due only in the future, the court granted in the ruling of its decision that from the day following the publication (issue) of the decision It would "pay" a cash deposit in an amount corresponding to each six-month period of the delay as a percentage of the total of 7 and the repo rale (the rate limit for repo transactions), as announced in the Bulletin of the Csech National Bank at the rate applicable from the first day of the calendar half-year.*

- *IV. The action in respect of arrears interest is incomplete, vague and Incomprehensible, if it appears that the plaintiff seeking the right (claim) for interest on late payment, regarding arrears interest for what period it should be attributed to interest on late payment and whether the arrears interest required under 1PC is attributed in full or in part, and whether - if It Is subject to Us commercial obligations - interest has been agreed between the parties or determination of the implementing regulation issued under the authority contained in § 517 paragraph 2, after the semicolon of the Civil Code.*

- *The debtor is in default in if has duly and timely fulfilled Us debt (liability), or a party who did not properly and timely satisfy the claim of the other party. In case of delay in performance (compensation) of a monetary debt (liability claim), the debtor (obligatory contributor) must pay the outstanding amount - except In cases where the debtor is required by law to pay late charges - arrears interest; the obligation is imposed on U by the civil relations provisions of § 517 paragraph 2 Civil Code. Act., In family relations of § 104 of the Act. the family and § 517 paragraph 2 Civil Code. Act, the employment relations provisions of § 256, paragraph 2 of the Act. and the work and business obligations of § 569, paragraph Commercial /. Ad.*

According to the plaintiff the claim for arrears Lntcrcsi of 10 September t997 meets the criteria outlined above in IV.; this mainly includes the application of this order and return the accessories (in full), and that arrears interest has not agreed, so that it means the accessories in the amount prescribed by the law.

On the level of compensation in the form of lost profit for the period from I July 1992 until 1 May 2000 the plaintiff Btates at follows:

a) loss of earnings estimated by the plaintiff 5,770,780,000.00 C7.K;

b) based on a partial arbitral award dated 25 June 2002 the defendant settled the amount of 326.601,334 CZK, on 16 January 2003;

c) Ihc actual amount of lost profits after the partial implementation is the amount of CZK 5.444,171,666.00.

Given the fact that the parties had not agreed a specific interest rate. tlx amount of accrued interest is defined in the applicable provisions of § 369, paragraph 1 in conjunction with § 502 of the Commercial Code so that the debtor must pay interest on the outstanding amount of arrears specified in the contract, i.e. about 1% higher than the interest rate on commercial loans.

Given the partial settlement the base interest rate changes, though the basis for calculating arrears interest from the date of the partial settlement of the date of the 30 Jme 2007 has been each year reduced by the partial settlement atinbutable to each year. In this regard, the plaintiff urns released from the operative part in the grounds of the partial award. It admitted partial settlement under the party consensus on the minimum amount of damages for the period from 1 July 1992 to 30 May 2000 so that for each year it settled a certain amount of damages (the amount is the amount stated in the ruling of the partial arbitral award). In terms of amounts, or compensation for individuals, the arbitrators reached the same conclusion, which is quantified by an expert, presented in the summary of the defendant and took the decision as a minimum and partial finding admitted by the plaintiff.

Accordingly, for the same period, for the purposes of the interest late the sum of the amounts reduces by 326 608 334.00 CZK. The amount of 199 313 095.00 CZK is reduced, and interest shall be calculated from I November 1995 as this amount is originally owed by the defendant. This (original) amount is deducted front the total amount of damages 5,770,780,000.00 CZK for finding accessories.

a) from 1 November 3995 the amount due was 199 313 095.00 CZK

- with no partial payment, the amount due was 199 313 095.00 CZK

- The interest rate determined by the way indicated above was 12.49%

- The interest rate period from 1 November 1995 to 16 January 2003 was 2633 days

- Arrears interest of the amotait of 199 313 095.00 CZK, for the period from 1.11.95 to 16.1.2003, tbe rate is 12.49% and 179 579 297.00 CZK

b) from 1 June 1992 to 30 June 1997 the debt amounted to 3,762,008,905.00 CZK (the amount of lost profits for the years 1992 until the first half of 1997)

- Some (proportional) transactions were 232.3.00 CZK on 16 January 2003

- The outstanding amount was CZK 3,529,708.905.00 CZK

- The interest rate determined in the manner indicated above was 15.24%

- The interest period from 1 July 1992 to 16 January 2003 was 2026 days

- Arrears interest of the amount of 3,762,008,905.00 CZK, for the period from I July 1992 to 16 January 2003, the rate of 15.24% 3.182.37.064.00 CZK

c) from I July 1997 to 31 December 1997 the amount owed was 417.583,000.00 CZK (the amount of lost profits for the second half of 1997)

- Some (proportional) transactions were 29,000,000.00 CZK on 16 January 2003

- The outstanding amount was CZK 388 583 000.00

- The interest rate determined in the manner indicated above was 13.98%

The interest period from I July 1997 to 16 January 2003 was 1842 days

- Arrears interest oftheamounlof 417 583 000.00 CZX, for the period from I July 1997 to t6 January 2003, the rate is 13.9854 and 294 609 497.00 CZX

d) from 1 January 1998 to 31 December 1998 the debt amounted to 707 394 000.00 CZK (the amount of lost profits for the year 1998)

- Some (proportional) settlements were for 29,500.000.00 CZK on 16 January 2003

- The outstanding amount was CZK 677 849 000.00

- The interest rate determined in the manner indicated above was 11.29%

- Interest penod from I January 1998 to 16 January 2003 was 1477 days

- Arrears interest in the amount of 707 394 000.00 CZK, for the period from 1 January 1998 to 16 January 2003 at the rate of 11.29% is 323 I58 30I.00 CZK

e) from 1 January 1999 to 31 December 1999 the amtnait owed amounted to 546.083,000.00 CZK (the amount of lost profits for the year 1999)

- Some (proportional) settlements were for CZK 27,100,000 on 16 January 2003

- The outstanding amount was CZK 518 983 000.00

- The interest rate determined in the manner indicated above was 8.39%

- The interest period from I January 1999 to 16 January 2003 was 1112 days

- Arrears interest in the amount of 546 083 000.00 CZK, for the period from I Janmay 1999 to 16 January 2003 at the rate of 8.59% is CZK 3 70 142 910.00

0 from 1 January 2000 May 2000 the amount due was 138 443 000.00 CZK (the amount of lost profits for the year 2000)

- Some (proportional) settlements were for 8,708,334.00 CZK on 16 January 2003

- The outstanding amount was CZK 129 734 666.00 CZK

- The interest rate determined tn the manner indicated above was 8.00V*

- Ihe interest period from 1 January 2000 to 16 January 2003 was 990 days

- Arrears interest in the amount of 138 443 000.00 CZK, for the penod from 1 January 2000 to 16 January 2003 at the rate of 8.00% is 30,040,235.00 CZK.

Tba amount of arrears interest on the amounts due to the relevant partial settlement, L*. to 16 January 2003, letter. a) to 1) above is an amount of 4,152,672,763.00 CZK

It is necessary to pay the same rates as the amount due as long as the partial implementation described d) to 0 remains to be paid, at the same rates. Thus, the plaintiff shall bear interest calculated on the outstanding amount from the above point **a)** to 0 16 January 2003 to 30 June 2007. The number of days of delay is accordingly 1he same - 1626 days:

a) from 1 November 1995 the amount due is 199 313 095.00 CZK

- with no partial payment, the amount due Is 199 313 095.00 CZK

- The interest rate determined in the manner indicated above was 12.49%*

The interest penod from !6 January 2003 to 30 June 2007 at a total of 1626 days

- Arrears interest in the amount of 199,313,095.00 CZK for the period from 16 January 2003 to 30 June 2007, the rate is 12.49% and 110 898 571.00 CZK

- Continuing daily arrears interest from I July 2007 amounts to CZK 68,203.30

b) from 16 January 2003 the amount owed is 3529708905.00 CZK

- The interest rate determined in the manner indicated above was 15.24%

- The interest period from 16 January 2003 to 30 June 2007 was for a total of 1626 days

- Interest on Late component of 3529708905.00 CZK, for the period from 16 January 2003 to 30 June 2007, at the rate of 15.24% is 2,396,357,090.00 CZK

- Continuing daily areears interest from 1 July 2007 amounts to CZK 1,473,774 35

c) from 16 January 2003 the amount due is 388 583 000.00 CZK

- The interest rate determined in the above manner is 13.98%

- The interest period from 16 January 2003 to 30 July 2007 was for a total of 1626 days

- Arrears interest in the amount of 388 583 000.00 CZK, for the penod from 16 January 2003 to 30 June 2C07, the rate is 13.98% and 242 001 827.00 CZK

- Continuing daily arrears interest from 1 July 2007 amounts to CZK 148,832.61

d) from 16 January 2003 the amount due is 677 849 000.00 CZK

- The interest rate determined in the manner indicated above was 11.29%

- The interest period from 16 January 2003 to 30 June 2007 was for a total of 1626 days

- Arrears interest in the amount of 677 849 000.00 CZK, for the period from 16 January 2003 to 30 June 2007, the rate n 1129% and 340 921 647.00 CZK

- Continuing daily arrears interest from 1 July 2007 amounts to CZK 209,668.91

e) from 16 January 2003 the amount due is 518 983 000.00 CZK

- The interest rate determined in the manner indicated above was 8.59%

- The interest period from 16 January 2003 to 30 June 2007 was for a total of 1626 days

- Arrears interest in the amount of 518 983 000.00 CZK, for the period from 16 January 2003 to 30 June 2007, the rate of 8.59% and is 198 597 589.00 CZK

- Continuing daily arrears interest from I July 2007 amounts to CZK 122,138.74

f) from 16 January 2003 the amount due is 129 734 666.00 CZK

- The interest rate determined in the manner indicated above was 8.00%

- The interest period from 16 January 2003 to 30 June 2007 was for a total of 1626 days

- Arrears interest in the amount of 129 734 666.00 CZK, for the period from 16 January 2003 to 30 June 2007, the rate is 8.00% to 46,235,302.00 CZK

- Continuing daily arrears interest from 1 July 2007 amounts to CZK 28,435.00

The amount of interest on outstanding amounts due under the specified points a) to f) above Is CZK 3,335,012,027.00 at 30 June 2007

The above rates and the amount of the sums due from a) to 1\ the daily arrears interest in the amounts still owed, in total, 2,051,053.00 CZK, which the plaintiff is also asked to accept, starting on 1 July 2007.

The amount of accrued interest on the debt and the total amount for the period from 1 July 1992 to 30 Joac 2007 was CZK 7,487,684,791.00.

The arbitrators did nut accept the interest calculated by the plaintiff with respect to the above legal assessment and the objections of limitation raised by the defendant Accordingly they had to recalculate their own arrears interest, because it could be counted until the day that followed the date on which the defendant informed the plaintiff of the above rights (i.*. the date on which the defendant acquired "knowledge* about the amount).

In calculating arrears interest it is necessary under the legal opinion of the arbitrators to make three basic assumptions of both the observed loss of income and the amount (in this case, the arbitrator relied cm the actuarial report in its "Supplement to the responses to individual questions of an expert report pursuant to Resolution No. 3 of the Arbitral Tribunal of 39 September 2006*, dated 16 May 2007) when it was notified of the defendant and where the defendant had partially made settlement (16 January 2003).

The arbitrators, accordingly, were guided by the amount of lost profits and partial payment of the defendant on 16 January 2003 on the partial arbitral award.

Year	The amount of kwt earnings determined by th« experts	The amount payable for partial payment on 16 January 2003 with arrears ta 16 January 2003
1992	119,116,000	119,116,000
1993	488,406,000	457,606.000
1994	626,SII,000	580,111,000
1995	755,992,000	691.392,000
1996	733,465,000	671.965,000
1997	675,039.000	617,039,000
1998	535.936,000	486.436,000
1999	3S5.962,000	351.862,000
2000	115.828,000	103,726,334

Another issue thnl the arbitrator had to deal with was the question of when the plaintiff told the defendant the amount of the loss of profit.

On 13 September 1995 the plaintiff sent the defendant a letter dated 12 September 1995 relating to compensation of CZK 0.5 billion, well the principal as calculated by the plaintiff amounted to 199,319,059.00 CZK. This amount was subsequently the subject of proceedings.

In the application of 15 October 1996, which was delivered to the arbitrators on 21.10.1996, the plaintiff sought compensation for loss of profits amounting to 152 785 000.00 CZK for the period from 1 April 1992 to 31 December 1992 and CZK 1.630,642,500.00 CZK for the period from 1 January 1993 to the time at which the plaintiff will receive a written apology from the defendant according to the ruling of (he partial arbitral award. The application was received by the Ministry of Health of the Czech Republic according to its statement on 11 November 1996.

The plaintiff in a submission of 17 December 19% which was delivered to the arbitrators on 6 January 1997 (the date (hat the arbitrator considered the submission date of receipt of the defendant) makes a claim against the defendant for foregone profit of 1,965,175,500.00 CZK.

The plaintiff in a submission of 10 February 1997, which was delivered to the arbitrators on 18 February 1997 (the date that the arbitrator considered the submission date of receipt of the defendant), extended the claim to the amount of 2,073,938,880.00 CZK.

From tire "Summary record of the actions of the Ministry of Health and Human Diag, Inc." of 8 June 2001 the arbitrator found that later that day the defendant was informed of the new amount required for loss of profits, in the amount of 3,813,667,000.00 CZK.

The plaintiff by a submission of 17 March 2005, which was delivered to the arbitrators on 24 March 2005 (the date that the arbitrator considered the submission date of receipt of the defendant), extended the action and claimed a revenue loss of € 4,358,194,787.00 CZK.

The plaintiff by a submission of 2 July 2007, which was delivered to the arbitrators on 13 July 2007 (the date that the arbitrator considered the submission date of receipt of the defendant), extended the action and claimed a revenue loss of € 5,770,780,000.00 CZJC.

Based on these findings, the arbitrators came to the legal opinion that the plaintiff is entitled to claim arrears interest on the amounts from the following days:

Amount	first day of delay by th« defendant
199 J19 059.00 CZK	H September 1995
1713427500.00 CZK	12 November 1996
1965175500.00 CZK	7 January 1997
2073938180.00 CZK	19 February 1997
3813667000.00 CZK	9 June 2001
43581947*7.00 CZK	25 March 2005
5,770,7*0,000.00 CZK	14 July 2007

The table dearly indicates that the first day on which it is possible to grant the plaintiff a daim to the payment of arrears interest is 14 September 1995, although the plaintiff has been awarded lost profits since 1991

The amount of arrears interest will be governed by § 369, in conjunction with § 502 Commercial Code in force at the time of default by the defendant. That Is not applied to all parts of the arrears interest, as will be explained below.

A. For the period to 16 January **2003 the arrears interest Is for the** following amounts:

a) the amount of CZK 199 319 05 .00 from 14 September 1995 to 16 January 2003 for 2316 days delay at the rate of 12.49% per annum producing an amount of arrears interest of 157 962 780.00 CZK;

b) the amount of CZK 1,584,108,441.00 from 12 November 1996 to 16 January 2003 for 2257 days delay at the rate of 14.876% per annum producing an amount of arrears interest of 1457168854.00 CZK;

c) the amount of 181 748 000.00 CZK from 7 January 1997 to 16 January 2003 for 2200 days delay at the rate of 14.883% per annum producing an amount of arrears interest of 163 037 600.00 CZK;

d) the amount of 108,763,380.00 from 19 CZK February 1997 to 16 January 2003 fox 2150 days delay at the rate of 14.883% per annum producing an amount of arrears interest of 95,350,350.00 CZJC

c) Itie amount of 1739728120.00 CZK from 9 June 2001 to 16 January 2003 for 737 days delay at the rate of 8.776% per annum producing an amount of arrears interest of 308 284 889.00 CZK.

The arrears interest to 16 January 2003 Is thus a total of 2,181,804,473.00 CZK.

11. For the period from 17 January 2003 to 30 June 2807 arrears interest amounts to:

a) the amount of CZK 199 319 059.00 from 17 January 2003 to 30 June 2007 for 1625 days delay at the rale of 12.49% per annum producing an amount of arrears interest of 110 833 125.00 CZK;

b) the amount of CZK 1,584,108,441. from 17 January 2003 to 30 June 2007 for 1625 days delay at the rate of 14.876% per annum producing an amount of arrears interest of 1049135750.00 CZK;

c) the amount of CZK 181,748,000.00 from 17 January 2003 to 30 June 2007 for 1625 days delay at the rate of 14.883% per annum producing an amount of arrears interest of 120 425 500.00 CZK;

d) the amount of CZK 108,763,380.00 from 17 January 2003 to 30 June 2007 for 1625 days delay at the rate of 14.883% per annum producing an amount of arrears interest of 72,067,125.00 CZK;

e) the amount of CZK 1,739,728,120.00 from 17 January 2003 to 30 June 2007 for 1625 days delay at the rale of 8.776% per annum producing an amount of arrears interest of 679 732 625.00;

0 For the amount of CZK S44,527,787.00 the delay occurred to the settlement of this amount from 25 to March 2005. Accordingly, the amount of accrued interest must be determined at this time under the existing legislation. The Commercial Code already referred in paragraph $ 369 I to the rules of civil law, i.e., the Government Regulation No. 142/1994 Coll.[1] by § 1 of which the arrears interest rate la twice the annual discount rate of the Czech National Bank on the first day of delay in the settlement of the financial debt. The discount rate on 25 March 2005 was 1.25%.

Accordingly, arrears interest in the amount of CZK 554,527.787.00 from 25 March 2005 to 30 June 2007 for 828 days of lateness at a rate of 2.50% per annum will produce arrears interest of CZK 30.881,088.00.

Arrears interest from 17 January 2003 to 30 June 2007 thus amounts in total to CZK 2,063,075413.80.

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[1] Although si that tone l'tare was Government Regulation 16V2005 Coll of 23 March 200$, which amended (he cited regulation of die government, but did wot take effect until 28 AprJ 2305.

Arrears interest to 30 Jane 2007 counting totals A. and B. amounts to CZK 4,244,879,686.00. The remainder of the claim for the imposition of arrears interest amounting to CZK 3,242,805,10S.00 b rejected.

C. For the period from 1 July 2007 to payment the daily arrears interest is as follows:

a) the amount of CZ1C 199 319 059.00 at tli* rate of 12.49% per annum produces daily arrears interest of 68 205.00 CZK;

b) the amount of CZK 1584108441.00 at the rate of 14.876% per annum produces daily arrears interest of 645,622.00 CZK;

c) the amount of CZK 181 748 000.00 at a rate of 14.883% per annum produces daily arrears interest of 74 108.00 CZK;

d) tire amount of CZK 108 763 380.00 at a rate of 14.883 % per annum produces daily arrears interest of 44 349.00 C2K;

c) the amount of CZK 1,739,728,120.00 at the rale of 8.776% per annum produces daily arrears interest of 418 297.00 C2K;

0 the amount of CZK 544 527 787.00 at a rate of 2.5% per annum produces daily arrears interest of 37 296.00 CZK;

The daily interest on the anoints referred to in points. n) to f) is CZK 1,287,877.01).

g) The amount of 58,130,213.00 CZK is entitled to arrears interest for the plaintifr to 14 July 2007. At that time Government Regulation 163/2005 Coll. was not yet In effect, under which the interest rate is the repo rate per annum set by the Czech National Bank, plus seven percentage points. In cacti calendar half-year in which the debtor is in default the arrears interest rate depends on the repo rate set by the Czech National Bank on the first day of the calendar half-year. It is thus clear that the Arbitral Tribunal cannot set a specific daily amount of arrears interest, because it is variable in each calendar half-year.

240. The plaintiff has claimed entitlement to the application of financial and nonftnancial compensation.

The plaintiff by a submission of 7 April 2000 made an application to withdraw the application in that part which relates to financial and nonfinancial compensation and proposed that the Arbitral Tribunal should grant the withdrawal of the resolution and bring the arbitration procedures in this section to a halt.

The Arbitral Tribunal in the minutes of the meeting of the arbitrators recorded on several occasions that this application was filed, but the file does not contain any decision that such a party would be admitted as a plaintiff by the Arbitral Tribunal. In order that the tribunal should rule on the application for the plaintiff, the plaintiff urged in a submission of 29 May 2001 that the Arbitral Tribunal should decide on the application. In the course of the proceedings there was no further discussion of the proposal of the plaintiff

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The plaintiff by a submission dated April 17, 2002 withdrew its application to withdraw the claim for financial and nonfuiancial compensation. The plaintiffs application has also not been decided. The defendant has not commented on any of the proposals of the plaintiff.

Accordingly **a** decision on the proposals hod to be taken by the tribunal. The arbitrators based the decision on the proposals for withdrawal of the plaintiffs claim for withdrawal and the withdrawal on the cascLaw of the Constitutional Court. According to Use precedent ll.US 1342-1307 the withdrawal of a claim (in this case the compensation claim) is an irreversible act. According to the Constitutional Court IV.US 295/97 "when the party has taken a procedural step for which the law permits such a withdrawal, it is not possible to take that withdrawal back in **a** subsequent act, and to return the proceedings to the original state."

The arbitrators, accordingly, could not decide otherwise, even if belatedly, than to allow the proposed withdrawal of the claim regarding compensation and, accordingly, on 13 June 2008 issued Resolution No. 62 and the proposal of the plaintiff of 7 April 2000 for a partial withdrawal of the claim foT nan-financial compensation was admitted.

241. The plaimifThas in its first action demanded that the defendant should be required to deliver a letter to the plaintiff as requested, signed by the current Minister of Health. The relevant claim was for an interim award or partial award decision.

Regarding the letter of apology, an interim award dated 19 March 1997 to a definitive decision that the claim for nonfinancial compensation in the form of a letter of apology is legitimate. The text letter of apology should be decided In the final arbitral award.

The plaintiff in its final application proposes that the defendant should be required to address the letter to the plaintiff by registered post, containing the text: "The Czech Republic - Ministry of Health apologises for its illegal actions against the company Diag Human SE, which unduly and unreasonably damaged its reputation and excluded from business. It regrets its unlawful conduct and the consequences of it." within one month of the final arbitral award.

In respect of the withdrawal of the application for non-fioaacial compensation of the plaintiff an 7 April 2000 the proceedings oa this part of the claim have beta dosed.

242. The plaintiff requested the submission of 10 February 1997 of a publication in print of the letter of apology. The proposal was for the issue of two partial arbitral awards, ami under the second the plaintiff had requested the defendant to publish an apology on the front page of the newspaper MLada fronta Dnes. The Arbitral Tribunal in the preamble to the interim arbitral award of 19 March 1997 stated that the application by the plaintiff in this regard would be met, as a violation of state law had occurred in the letter addressed to Novo Nordisk and the apology published in a newspaper would be an inherently unreasonable response to tbe disturbance of the legal position. The arbitrators regarded the form of an apology letter as appropriate, with the text to be decided in the final arbitral award.

The plaintiff in its final drift proposed that the defendant should disclose to it the apology text in a text which should include letter of apology drafted by the defendant for the plaintiff, in the form of at least a half page advertisement in the newspapers Mlada fronta Ones, Pravo, Lidove Novioy and Hospodarske noviny and in the broadcasting time between 19.00 and 21.00 in the television stations Czech Television, TV Nova and TV Prima.

According to the plaintiff if is clear and well-known fact that its integrity has long and consistently been publicly attacked. Officials have been involved as well as the defendants constitutional offices, enjoying generally high degree of credibility. Sometimes as an anonymous "source of information from government", but also through personal appearances in public media. These cases were also demonstrated in the proceedings, to the extent to which the plaintiff has protested against the attack as an independent decision in its case. Public officials submitted a public report on the coordination of repressive forces the defendant's constitutional authority and public action (in the case it is documented that the relevant report derives from the Supreme Prosecutor Benesova, Interior Minister Gross and the Director of the anri-corTuption police in the Chamber of Deputies). The file fully documents the false statements of the Minister of Health MD. Souckova, public disinformation and denial of the actual state of affairs. The plaintiff believes that enhancing interventions have been demonstrated by the defendant in its personal integrity and an increase in its activity. It is in line with the facts that the defendant was required to publish an apology acknowledged in the same places where it committed those attacks.

In respect of the withdrawal of the application on tion-financlal compensation of the plaintiff on 7 April 2000 the proceedings on this part of the claim have been doted.

243. The plaintiff requested from the defendant financial compensation in the amount of CZK 91,300,000 00. In the statement on the interim arbitral award it is explicitly stated that the claim for financial compensation has not yet been decided.

In the further stages of the proceedings after the release of the interim arbitral award of 19 March 1997, no evidence emerged on this claim because the plaintiff did not propose any evidence to demonstrate its claim or that this part of the claim has been established. In the final draft by the plaintiff this claim was no longer asserted.

In respect of the withdrawal of the application on financial compensation for the plaintiff on 7 April 2000 the proceedings on this part of the claim have been closed.

244. The plaintiff also claimed entitlement to payment of actual damages amounting to CZK 21,000,000.00. According to the plaintiffs allegations in the application of IS October 1996, this damage was due to non-payment of goods which the plaintiff supplied to Czech medical facilities based on signed contracts, negotiated with them, and from which the plaintiff had to withdraw because the medical facility was refusing to meet its own obligations of cooperation with Novo Nordisk. The course of this procedure did not lead any evidence on this claim because the plaintiff did not propose any evidence to prove Its claim or that this part of the claim has been established. The proof related exclusively to a loss of profit. In the final application by the plaintiff this claim was dropped.

In raped of the fact that the arbitrators decided that the claim of the plaintiff to payment of the amount of CZK 21,000,090.00 as actual damages is rejected for lack of proof.

245. The plaintiff also submitted a claim for payment of the amount of CZK 67,300,000.00 as compensation for damage to the plaintiffs commercial name.

This claim was the subject of a final decision in the interim award dated 19 March 1997. This claim was rejected.

246. According Jo the arbitrators these were the decisions on all claims which the plaintiff made in the arbitration.

The defendant, in the course of the arbitration proceeding, has not asserted any property or other claims, or even an ofTset in the form of netting or in the form of **a** counterclaim.

247. According to the arbitrators, the strategy of the defendant in the arbitration of q'jestioning and ignoring (he final arbitral awards, as well as a general questioning of the documentary evidence submitted by the plaintiff, for which the defendant claimed to dispute its probative value it any, is very problematic and unsuitable and does not prove anything (c.g. submission of the defendants of 3 May 2007). The claims made by the plaintiff in this case were regarded by the defendant as only virtual, hypothetical and unsubstantiated by any evidence.

The arbitrators did aot accept the legal assessment of the defendant, because after taking the evidence they reached the opposite legal opinion, that the plaintiff in the arbitration proceedings bears the burden of proof, and accordingly decided as stated in the ruling of the final arbitral award. The proccdnre has clearly demonstrated the facts and circumstances relied on for the legal claim relating to damages and some interest.

248. Tbe plaintiff in its final application claimed as costs, the costs of legal representation in accordance with Decree No. 177/1996 Coll. with legal fees of 805 239.00 CZK 416 for legal services operations and 415 flat-rate deposits paid to the experts at 1,200.000.00 CZK, remuneration paid to the arbitrators and the costs of acquisition of expert assessments by Novota as, in the amount of 300.000.00 CZK.

The defendant has not paid the cost of the attorneys or the other costs in the final draft.

Hie ZRft does not specifically rule in its provisions regarding the settlement costs on the decision. This question is still in dispute between the parties in modification of the arbitration agreement of 18 September 1996 in 61. HI. last sentence: "The costs of any legal fees paid by each party will be met by that party."

The arbitrators, with regard to the provisions of tire arbitration agreement, even though the plaintiff was successful in the proceedings, have not awarded the payment of the costs of legal representation. The arbitrators take the same view regarding of tire reimbursement of the expert opinion of Novota as, which tire plaintiff sought, ie.. that the plaintiff should pay for this themselves.

249. The appointed expert E & Y Valuations Ltd. invoiced costs to the Arbitral Tribunal *for* the expert opinion with invoice No. CZL04000QC200 of 15 April 2008 - Ernst & Young, the costs associated with the verification of an expert to 641,000.64 and Invoice No. CZL040000Q201 of 15 April 2008 - Ail expert wort performed and costs incurred in connection with expert services in the total amount of CZK 949,508.14. Both amounts are inclusive of VAT. In total, the amount requested by the expert is CZK 1,590,508.78.

As stated above, the arbitrators used the expert's report as the basis for its decision on the amount of lost profits due to the fact that the expert considered the costs charged to the expert

opinian to be valid, It accepted the payment of all the coats invoiced invoices in question, i.e.. It accepted the reimbursement of costs totalling CZK 1,590,508.78.

The arbitration agreement contains no provision for reimbursement of costs other than fees of the arbitrators and the costs of legal representation of the parties, and for the remuneration paid to the arbitrators each party will bear half the costs and attorney's fees borne by the arbitrator of its choice. The arbitrators decided to share the costs of the expert opinion under section III. of the arbitration agreement and stipulate that regardless of the outcome each party to the dispute will bear half the cost It accordingly held that the plaintiff and the defendant are required to pay the costs of experts for the expert's report in the amount of CZK 795,254.39.

The plaintiff and the defendant clearly agreed on behalf of experts each advance for the expert opinion of 1,200.000.00 CZK. The difference between the deposit and the claim of the experts represents a cost of CZK 809,49122. The expert is required to return within the deadline to the plaintiff and the defendant the refund amount, in each case for CZK 404,745.61.

250. The parties in the arbitration agreement of 18 September 1996 in accordance with § 27 ZRft argument an opportunity to review the final arbitral award. A request for reconsideration of the arbitral award may be delivered to the other party within 30 days from the date on which the party requesting review receives the final award.

Prague 6, 4 August 2008

Prof. JUDr. Kvetoslav Ruzicka, PhD.
presiding arbitrator

Prof. JUDr. Monika PauknerovA, PhD.
arbitrator

JUDr. ZdcrZk Rusck
arbitrator