Investment Law and Policy Weekly News Bulletin, May 16, 2003

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Contents at a Glance:

Editor's Note
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1. INVEST-SD Bulletin Archive Now Available on the Web

As part of a revamp of its investment web site, the International Institute for Sustainable Development has created an archive of back issues of the INVEST-SD Bulletin dating back to October of 2002. The issues are available in PDF format, and have been grouped together by month of publication.

Arbitration Watch:
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2. Swedish Court Affirms Award Against Czech Republic; Damages Could be Taxable,
By Luke Eric Peterson

In a ruling this week, the Swedish Court of Appeal in Stockholm has rejected an appeal by the Czech Republic of an UNCITRAL arbitration award handed down earlier this year.

The ruling paves the way for Central European Media Ltd. (CME) to collect more than a 1/3rd of a Billion Dollars (US) as a result of Czech violations of a bilateral investment treaty between the Czech Republic and Holland.

According to Czech radio reports monitored by the British Broadcasting Corporation, the Swedish Court's decision cannot be appealed.

In a press release, CME has indicated that it expects to receive payment from the Czech Republic in a matter of days. The firm also revealed that the Dutch tax authorities are seeking to tax the entire award at a rate of 34.5% (approximately $121 million) of the award. CME is currently engaged in talks with the Dutch Government on the question of taxation. CEO Fred Klinkhammer has criticized the Dutch government's position as a form of "double-taxation".

It was CME's connection to the Netherlands which gave it the ability to invoke the provisions of the Dutch-Czech BIT in its dispute with the Czech Government over the treatment of CME's private broadcasting enterprise.

A separate BIT arbitration brought by CME's controlling shareholder, Mr. Ronald Lauder, a former US ambassador to Austria, had proven unsuccessful. The Tribunal in that case ruled that the Czech Republic's treatment of Mr. Lauder's investments in CME did not violate the key provisions of the US-Czech Republic bilateral investment treaty.

CME was able to launch a parallel claim under the Dutch-Czech Republic BIT, and it was this claim which yielded success in September of 2001 when a divided Tribunal handed down its ruling on the merits. A separate damages award was handed down earlier this year. This week's unsuccessful appeal in Sweden (where the arbitration was legally grounded) marks the final chapter in the dispute.

With the conclusion of the CME/Lauder arbitrations, the conflicting rulings issued in the two arbitrations highlight a key weakness in international investment arbitration: the prospect for parallel and divergent rulings by separate Tribunals facing related claims.

Arbitration-watchers will now turn their attention to Argentina where the embattled government faces 11 arbitrations being heard at the Washington-based International Center for Settlement of Investment Disputes (ICSID). At least eight of these cases are understood to involve challenges by foreign investors to a series of emergency measures put into place by the Argentine Government in response to its financial crisis.

According to legal sources, the Argentine Republic also faces an unclear number of ad-hoc BIT arbitrations brought under the UNCITRAL arbitration rules. One partner with a European law firm confirmed in interviews with INVEST-SD, that he is involved in two BIT arbitrations against Argentina under the UNCITRAL rules, and "is aware of a third".

Sources:

INVEST-SD interviews

"Czechs to pay US media firm 350M dollars over lost TV Court Appeal", BBC Monitoring International Reports, May 15, 2003

"Central European Media Enterprises to collect $355 Million or More than $26 per Share", CME Press Release, May 15, 2003

Awards in the two UNCITRAL arbitrations against the Czech Republic are available at:
http://www.mfcr.cz/index_en.php

3. Hungary to Host Symposium on Central-Eastern European Arbitration

The London Court of International Arbitration is hosting a one day symposium in Budapest entitled "Arbitrating in Central and Eastern Europe: Opportunities and Pitfalls". The event is co-sponsored by the law firm, Clyde & Co, and is scheduled for June 13, 2003.

The day's programme will see two panel discussions on investment treaties, followed by afternoon sessions on Oil & Gas Disputes, and

"Issues of Jurisdiction, Challenge and Enforcement".

For more information about the event or to register, contact Irene Bates at: ib@lcia-arbitration.com

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Negotiations Watch:
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4. Civil Society Groups Launch Website Opposed to WTO Investment Negotiations

This week a Netherlands-based research and campaign group launched a web portal which serves as a focal point for the civil society campaign against the initiation of negotiations on investment at the World Trade Organization.

Corporate Europe Observatory has created the site in order to provide a forum for critics of such a proposed agreement to share information and resources in the run-up to the WTO's Cancun Ministerial Conference in 2003.

The site's URL is: www.investmentwatch.org

5. Development Organizations Release Paper Critical of WTO Investment Agreement

A coalition of UK-based development agencies and organizations have released a short briefing paper which seeks to counter six popular arguments used to justify launch of WTO negotiations on investment. among other things, the paper seeks to challenge the commonly-held view that a multilateral agreement on investment would increase FDI flows to poor developing countries, and would lead to the phase-out of existing bilateral investment treaties.

The co-authors of the paper include: ActionAid, ChristianAid, Oxfam, CAFOD, Save the Children, and the World Development Movement. The paper is available at:

http://www.investmentwatch.org/files/UKJointNGO.pdf.

INVEST-SD Bulletin is edited in Boston, Massachusetts by Luke Eric Peterson for IISD.

Subscribers may submit news articles, notices of events, press releases, analyses, questions and requests for information to lpeterson@iisd.ca