

ARBITRATION UNDER THE UNCITRAL RULES

PCA CASE NO. 2010-13 / DUN-BZ

DUNKELD INTERNATIONAL INVESTMENT LTD (CLAIMANT)

v.

THE GOVERNMENT OF BELIZE (RESPONDENT)

ORDER NO. 9

28 August 2015

CONSIDERING:

- (A) Section 6 of the Tribunal's Order No. 7 of 11 March 2015, which provided as follows:
6. Cut-off for Additional Evidence
[. . .]
 - 6.3 Hereafter, additional documentary evidence will be admitted only in extraordinary circumstances and upon a showing of good cause.
- (B) The Respondent's letter of 25 March 2015, enclosing and requesting leave to introduce into the record a letter from counsel for the Claimant to the Government dated 9 June 2009, concerning the potential applicability of the Treaty to a dispute between the Parties concerning the Claimant's alleged interest in Telemedia;
- (C) The Claimant's letter of 27 March 2015, opposing the Respondent's application on the grounds that "the Application does not satisfy the high threshold for adducing evidence out of time in this arbitration, namely 'extraordinary circumstances and upon a showing of good cause'";
- (D) The Tribunal's Order No. 8 of 30 March 2015, denying the Respondent's application on the grounds that the "Tribunal does not see that the Respondent could not reasonably have located the document in question earlier and introduced it in connection with its written submissions or otherwise prior to the cut-off set out in the Tribunal's Order No. 7";
- (E) The hearing held in Miami, Florida from 7-11 April 2015, during which the Claimant argued that the letter dated 9 June 2009 (as described in a letter from counsel for the Claimant to the Government dated 27 August 2009 that served to provide notice of the Claimant's claims pursuant to the Treaty) must be viewed in light of "the objective

- evidence as to what Dunkeld may have known at the time the restructuring took place” (*Hearing Transcript*, pp. 73:14 to 74:22);
- (F) The Respondent’s argument during the Miami hearing that the letter dated 9 June 2009 (as described in the letter of 27 August 2009) provides evidence that the Claimant was informing the Government that its conduct was in breach of the Treaty one day after the migration of Dunkeld to the Turks and Caicos was completed (*Hearing Transcript*, pp. 213:12 to 215:9);
- (G) The Claimant’s Post-Hearing Brief of 9 May 2015, in which the Claimant argued that the letter dated 9 June 2009 (as described in the letter of 27 August 2009) provides evidence that “the Government was well aware of the consequences of its actions” (*Claimant’s Post-Hearing Brief*, para. 159);
- (H) The Respondent’s Post-Hearing Memorial of 8 May 2015, in which the Respondent argued that the letter dated 9 June 2009 (as described in the letter of 27 August 2009) provides evidence that “at the time of migration, Dunkeld was not only aware of—and concerned about—the potential for nationalisation but had specific, already existing, disputes in mind for which it was fully prepared to seek redress under the BIT” (*Respondent’s Post-Hearing Memorial*, paras. 61-62);
- (I) That both Parties have effectively relied upon the letter of 9 June 2009, by way of its description in the letter of 27 August 2009, notwithstanding the decision taken in the Tribunal’s Order No. 8 of 30 March 2015;
- (J) That, in light of the Parties’ respective arguments, the Tribunal considers it to be artificial to maintain the fiction that the letter of 9 June 2009 does not form part of the factual matrix of these proceedings;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The letter dated 9 June 2009 is hereby **admitted** to the record.
2. The Parties are invited to supplement their arguments concerning the letter of 9 June 2009, should they consider it necessary to do so, by way of simultaneous submissions on **Friday, 11 September 2015**. Such simultaneous submission are not to exceed 15 pages.

On behalf of the Arbitral Tribunal,



Albert Jan van den Berg,

Presiding Arbitrator