

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. 11

(CORRECTION OF THE TRIBUNAL'S AWARD OF 28 JUNE 2016)

17 August 2016

CONSIDERING:

- (A) The Settlement Deed dated 11 September 2015, entered into by *inter alia* the Claimant and the Respondent.
- (B) The Tribunal's Order No. 10 (by consent) of 16 September 2015, which provided as follows:
1. Pursuant to the terms of the Settlement Deed, the Respondent has withdrawn any and all of its preliminary objections to jurisdiction. The Parties have further confirmed that the Tribunal has jurisdiction to determine the Remaining Issues. Accordingly, the Parties have agreed specifically to confer on the Arbitral Tribunal jurisdiction to determine the Remaining Issues alone.
 2. Pursuant to the terms of the Settlement Deed, the Respondent has withdrawn any and all of its objections to the merits of the Claimant's claims under the Treaty. The Respondent has expropriated the Claimant's interest in the Telemedia shares. The Respondent has not yet paid compensation to the Claimant in respect of that expropriation, as required by Article 5(1) of the Treaty.
 3. The Arbitral Tribunal will proceed to determine the Remaining Issues in a Final Award.
 4. The terms of this Order by Consent will be recorded in the Final Award.
 5. No further written submissions shall be made by the Parties in relation to the Allen & Overy letter dated 9 June 2009 as envisaged in paragraph 2 of Procedural Order No. 9.
- (C) The Tribunal's letter of 11 April 2016, informing the Parties (i) that it had reached a decision on the valuation of Telemedia, (ii) that the valuation did not adopt completely the valuation model proposed by either Party, and (iii) that the Tribunal considered that it would be helpful if the calculations in the Award were subject to expert review to

ensure that the numerical result in fact reflected the intention of the Tribunal, and inviting the Parties to agree to a procedure whereby the Tribunal would provide the Parties with the core of its valuation in draft form, for review by the experts of each Party.

- (D) The Parties' joint letter of 18 April 2016, agreeing to the procedure proposed by the Tribunal.
- (E) The Tribunal's letter to the Parties of 22 April 2016, enclosing a section of the Tribunal's draft Award, as well as a workbook in Microsoft Excel format containing the relevant calculations.
- (F) The Parties' respective correspondence of 13 May 2016, commenting on the Tribunal's draft valuation of Telemedia.
- (G) The Parties' further correspondence of 23 and 26 May 2016, commenting further on the Claimant's proposed correction of the Tribunal's valuation of Telemedia.
- (H) The Tribunal's Award of 28 June 2016.
- (I) The Respondent's e-mail communication of 1 July 2016, requesting a copy of the Tribunal's calculations on the awarded interest.
- (J) The Claimant's e-mail communication of 7 July 2016, agreeing to the provision of the Tribunal's interest calculation.
- (K) The Tribunal's letter of 8 July 2016, providing the parties with a workbook in Microsoft Excel format setting out the interest calculation used in the Award.
- (L) The Respondent's *Article 36 Motion to Correct the Award* dated 27 July 2016, requesting the Tribunal to (i) correct the value of Dunkeld's interest in Telemedia in Belize dollars from BZ\$ 192,867,186 to BZ\$ 192,865,514.50; (ii) correct the calculation of the U.S. dollar value of Dunkeld's interest in Telemedia to use the exchange rate of the Central Bank of Belize at 25 August 2009 of BZ\$ 2.0063 for US\$ 1.00 in lieu of the inter-bank rate used by the Tribunal in its calculations; and (iii) make corresponding corrections to the calculation of damages attributable to the Accommodation Agreement and to the calculation of interest.
- (M) The Claimant's letter of 2 August 2016, arguing (i) that the Respondent had waived its right to seek a correction of the Award by not having raised these matters in its review of the Tribunal's draft valuation of Telemedia, and (ii) that the Respondent's arguments with respect to the appropriate exchange rate go "well beyond the correction of a computation, clerical, typographical or similar error permitted under Article 36 and should be rejected on this basis alone."

- (N) The Respondent's letter of 8 August 2016, denying that it had waived the right to seek a correction of the Award and reiterating the requests set out in its Article 36 Motion.
- (O) That the differences identified by the Respondent in the value of Dunkeld's interest in Telemedia in Belize dollars stem from the rounding of the per-share value of Telemedia in the text of the Tribunal's Award to BZ\$ 5.6547 per share from the un-rounded figure of BZ\$ 5.65474900702263 and that the value of BZ\$ 192,867,186 in paragraph 316 of the Award corresponds to 34,107,117 shares at the un-rounded per-share value.
- (P) That an un-rounded per-share value for Telemedia was used in the draft valuation workbook provided to the Parties on 22 April 2016.
- (Q) That the Respondent did not object to the use of an un-rounded per share value in the draft workbook and that the Respondent's expert, in his comments on the draft valuation of Telemedia, proposed a correction (which was accepted by the Tribunal) of the mid-year adjustment value to remove a rounded figure used in the Tribunal's draft valuation of Telemedia.
- (R) That the Tribunal's calculation of the U.S. dollar value of Dunkeld's interest in Telemedia was done at the rate of BZ\$ 1.926 per US\$ 1.00.
- (S) That paragraph 321 of the Tribunal's Award refers to the inter-bank rate for 25 August 2009 as "1.960 Belize dollars to the U.S. dollar".
- (T) That the Claimant, in the course of the proceedings, made its damages calculations using an exchange rate for 25 August 2009 of BZ\$ 1.98965 per US\$ 1.00, corresponding to the average inter-bank price for selling Belize dollars on that date (Expert Report of Alastair Macpherson, p. 128 (28 February 2014)).
- (U) That the Respondent did not, in the course of the proceedings, address the exchange rate to be used with specificity, nor did the Respondent provide evidence of the exchange rate of the Central Bank of Belize at 25 August 2009.
- (V) That the exchange rate of BZ\$ 1.926 per US\$ 1.00 represents the average inter-bank price for buying Belize dollars on 25 August 2009.
- (W) That the exchange rate of BZ\$ 1.926 per US\$ 1.00 was used in the draft valuation workbook provided to the Parties on 22 April 2016 and that neither Party commented on this aspect of the Tribunal's draft valuation.

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The Respondent's request to correct the value of Dunkeld's interest in Telemedia in Belize dollars is **denied**. However, for the avoidance of confusion, Paragraph 362(b) of

the Tribunal's Award of 28 June 2016 is hereby **corrected** to state the full, un-rounded per-share value of Telemedia as follows:

- (b) DECLARES that the value of Telemedia at 25 August 2009 was BZ\$5.65474900702263 per share, of which BZ\$3.38728185941928 is attributed to the value of the Accommodation Agreement;
2. The Respondent's request to correct the calculation of the U.S. dollar value of Dunkeld's interest in Telemedia to use the exchange rate of the Central Bank of Belize at 25 August 2009 is **denied**. However, the Tribunal considers that its calculations were intended to have been based upon the average inter-bank price for selling Belize dollars (BZ\$ 1.98965 per US\$ 1.00) as on 25 August 2009, rather than the rate for buying Belize dollars. Accordingly, **on its own motion**, the Tribunal **corrects** its Award of 28 June 2016 as follows:
3. Paragraph 321 of the Tribunal's Award of 28 June 2016 is corrected to read:

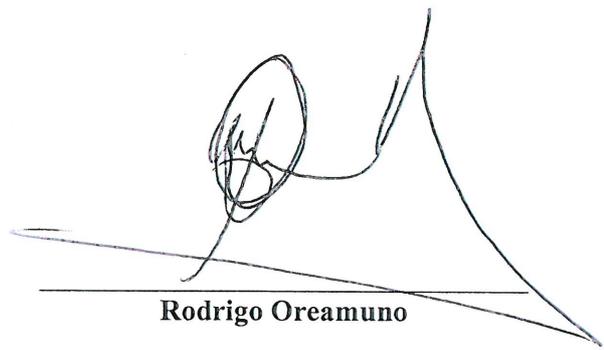
To the extent that any aspect of the question of currency is not resolved by the Settlement Agreement, the Tribunal agrees with the Claimant regarding the currency of damages and translates its calculation of Telemedia's value to U.S. dollars using the average inter-bank rate for the sale of Belize dollars on 25 August 2009 of 1.98965 Belize dollars to the U.S. dollar. On this basis, the Tribunal calculates the value of Dunkeld's interest at US\$96,935,233, of which US\$58,065,699 is attributable to the Accommodation Agreement.
4. Paragraph 329 of the Tribunal's Award of 28 June 2016 is corrected to read:

The Tribunal accepts Claimant's evidence that the rate of the weighted average annual rate for fixed term deposits of over one year in duration paid by commercial banks in Belize as at 25 August 2009 was 8.34 percent. Applying that rate, compounded quarterly and taking account of the Respondent's payment on 22 September 2015 of \$24,557,124 pursuant to the Parties' settlement agreement, the Tribunal calculates the interest due from 25 August 2009 to 28 June 2016 at US \$72,017,410, of which US \$44,099,684 is linked to the value of the Accommodation Agreement.
5. Paragraphs 362(c)–(e) of the Tribunal's Award of 28 June 2016 are corrected to read:
 - (c) DECLARES that the value of Dunkeld's interest in Telemedia as at 25 August 2009 was US\$96,935,233, of which US\$58,065,699 is attributed to the value of the Accommodation Agreement;
 - (d) ORDERS the Respondent to pay to the Claimant US\$96,935,233 in respect of the value of Telemedia, with such payment to be made in accordance with Section 4 of the Parties' Settlement Agreement of 11 September 2015, deducting the amount paid as "Partial Dunkeld Compensation" pursuant to paragraph 4.1(a) of the Parties' Settlement Agreement of 11 September 2015;
 - (e) ORDERS the Respondent to pay to the Claimant, in respect of the value of Telemedia, pre-Award interest in the amount US\$72,017,410 (of which US \$44,099,684 is attributed to the value of the Accommodation Agreement), with such payment to be made in accordance with Section 4 of the Parties' Settlement Agreement of 11 September 2015;
6. All other decisions remain as stated in the Tribunal's Award of 28 June 2016.

Done in The Hague, the Netherlands, the place of arbitration, on 17 August 2016.



John Beechey



Rodrigo Oreamuno



Albert Jan van den Berg
Presiding Arbitrator