UNCITRAL Arbitration Proceedings
CME Czech Republic B.V. (The Netherlands)

vs.

The Czech Republic

FINAL AWARD

issued in Stockholm, Sweden, in the UNCITRAL Arbitration Proceedings

between

CLAIMANT: CME Czech Republic B.V., Hoogoorddreef 9, 1101 BA Amsterdam Zuid-Oost, The Netherlands (hereinafter referred to as "CME") represented by:
Mr. John S. Kiernan, Mr. Mark W. Friedman and Mr. Michael M. Ostrove, Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022, U.S.A.

and

RESPONDENT: The Czech Republic

represented by the Minister of Finance of the Czech Republic Mr. Bohuslav Sobotka, Ministry of Finance, Letenska 15, 11810 Prague 1, The Czech Republic represented by: Mr. Jeremy Carver and Mr. Audley Sheppard, Clifford Chance, 200 Aldersgate Street, London EC1A 4JJ and Mr. Vladimir Petrus and Mr. Miroslav Dubovský, Clifford Chance Pünder, Charles Bridge Center, Křizovnické nám. 2, 110 00 Prague 1, Czech Republic

BEFORE: Dr. Wolfgang Kühn, Düsseldorf, Chairman of the Arbitral Tribunal,
Judge Stephen M. Schwebel, Washington D.C., Arbitrator,
Mr. Ian Brownlie, C.B.E.,QC, London, Arbitrator

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I.
The Dispute

A. Background of the Dispute

(1) The Parties

1. The Claimant, CME Czech Republic B.V., is a corporation organized under the laws of the Netherlands. The Respondent, the Czech Republic, is a sovereign State, represented in these proceedings by its Ministry of Finance.

(2) The Introduction of Arbitration Proceedings

2. CME Czech Republic B.V. (CME) initiated these arbitration proceedings on February 22, 2000 by notice of arbitration against the Czech Republic pursuant to Art. 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) The Netherlands / Czech Republic Bilateral Investment Treaty

3. CME initiated this arbitration as a result of alleged actions and inactions by the Czech Republic claimed to be in breach of the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic, executed on April 29, 1991 (hereinafter: "the Treaty"). The Treaty entered into force in the Czech and Slovak Federal Republic on October 1, 1992 and, after the Czech and Slovak Federal Republic ceased to exist on December 31, 1992, the Czech Republic succeeded to the rights and obligations of the Czech and Slovak Federal Republic under the Treaty.

(4) CME's "investments" under the Treaty

4. CME holds a 99 % equity interest in Česká Nezávislá Televizní Společnost, spol. s r.o. ("ČNTS"), a Czech television services company. CME maintains that, among other things, CME's ownership interest in ČNTS and its indirect ownership of ČNTS' assets qualify as "investments" pursuant to Art. 1 (a) of the Treaty. CME and these investments, therefore, are thereby entitled to the protection and benefits of the Treaty.

(5) CME's shareholding

5. CME acquired its 99 % ownership interest in ČNTS in steps. It acquired 5.8 % shares in 1997 by purchasing the Czech holding company NOVA Consulting, which owned these shares, and by purchasing, in May 1997, 93.2 % from CME's affiliated company, CME Media Enterprises B.V., which, in turn, in 1996 had acquired 22 % of the shares in ČNTS from the Česká Spořitelna a.s. (Czech Savings Bank) and 5.2 % from CET 21 Spol. s r.o. (CET 21).

6. Earlier, in 1994, CME Media Enterprises B.V. had acquired a 66 % shareholding in ČNTS from the Central European Development Corporation GmbH ("CEDC"). That German corporation was under the same ultimate control as CME and CME Media Enterprises, through Central European Media Enterprises Ltd., a Bermuda corporation, in turn controlled by Mr. Ronald S. Lauder, an American industrialist with domicile in the United States of America.

7. CEDC (with a share of 66 %), CET 21 (with a share of 21 %) and the Czech Savings Bank (with a share of 22 %) were co-founders of ČNTS, formed as a joint venture company in 1993 with the object of providing broadcasting services to CET 21.

(6) The Broadcasting License

8. CME's investments (its ownership interest in ČNTS and its indirect ownership of ČNTS' assets) are related to a license for television broadcasting granted by the Czech Media Council, empowered to issue licenses by the Czech Republic's Act on the Operation of Radio and Television Broadcasting, adopted on October 30, 1991, Act No. 468/1991 Coll. (hereinafter, the "Media Law"). This license was granted to CET 21, acting in conjunction with CEDC, for the purpose of the acquisition and use of the license for broadcasting throughout the Czech Republic. CME's and its predecessors' investments in this joint venture, principally between CEDC and CET 21, are the object of the dispute between the parties.

9. In late 1992 and early 1993, CEDC, on the invitation of CET 21, which was owned by five Czech nationals and advised by Dr. Vladimír Železný, a Czech national, participated in negotiations with the Czech Media Council (hereinafter: "the Council") with the goal of the issuance of the Broadcasting license to CET 21 with a participation therein, either directly or indirectly, by CEDC.

10. The Council issued the license to CET 21 on February 9, 1993 to operate the first nation-wide private television station in the Czech Republic. The decision granting the license acknowledged CEDC's substantial involvement of foreign capital necessary to begin television station activities and the conditions attached to the license acknowledged CEDC's partnership with the holder of the license, CET 21.

(7) The Formation of ČNTS

11. Instead of CEDC taking a direct share in CET 21 (as initially contemplated), and instead of a license being issued jointly to CET 21 and CEDC (also so contemplated), the partners of CET 21 and Dr. Železný agreed with CEDC and the Media Council to establish CEDC's participation in the form of a joint venture, ČNTS. The Media Council quickly came to the view that such an arrangement would be more acceptable to Czech Parliamentary and public opinion than one that accorded foreign capital a direct ownership or licensee interest.

(8) The ČNTS Memorandum of Association

12. A Memorandum of Association was made part of the license conditions, defining the co-operation between CET 21 as the license holder and ČNTS as the operator of the broadcasting station. CET 21 contributed to ČNTS the right to use the license "unconditionally, unequivocally and on an exclusive basis" and obtained its 12 % ownership interest in ČNTS in return for this contribution in kind. Dr. Zeleznŷ served as the general director and chief executive of ČNTS and as a general director of CET 21. ČNTS' Memorandum of Association ("MoA") was, after close consideration by the Media Council, approved by the Council on April 20, 1993 and, in February 1994, ČNTS and CET 21 began broadcasting under the license through their newly-created medium, the broadcasting station TV NOVA.

(9) ČNTS' Broadcasting Services

13. ČNTS provided all broadcasting services, including the acquisition and production of programs and the sale of advertising time to CET 21, which acted only as the license holder. In that capacity, CET 21 maintained liaison with the Media Council. It was CET 21 that appeared before the Media Council, not CME, though Dr. Zeleznŷ's dual directorships of CET 21 and ČNTS did not lend themselves to clear lines of authority.

(10) TV NOVA's success

14. TV NOVA became the Czech Republic's most popular and successful television station with an audience share of more than 50 %, with USD109 million revenues and USD 30 million net income in 1998. CME claims to have invested totally an amount of USD140 million, including the afore-mentioned share purchase transactions for the acquisition of the 99 % shareholding in ČNTS, by 1997. The audience share, the revenues and amount of the investment are disputed by the Respondent.

(11) The Change of Media Law

15. As of January 1, 1996, the Media Law was changed. According to the new Media Law, license holders were entitled to request the waiver of license conditions (and Media Council regulations imposed in pursuance of those conditions) related to non-programming. Most of the license holders applied for this waiver, including CET 21, with the consequence that the Media Council lost its strongest tool to monitor and direct the license holders.

(12) The Amendment of the Memorandum of Association

16. As a consequence of certain inter-actions between the Media Council and CET 21, including ČNTS, the shareholders of ČNTS in 1996 agreed to change ČNTS' Memorandum of Association ("the MoA") and replaced CET 21's contribution „Use of the license" by „Use of the Know-how of the license". In conjunction with the change of the contribution of the use of the license, CET 21 and ČNTS entered into a Service Agreement. That Agreement thereafter was the basis for the broadcasting services provided by ČNTS to CET 21 for operating TV NOVA. The circumstances, reasons and events

related to, and the commercial and legal effects deriving from this revision, are in dispute between the parties.

(13) The 1999 Events

17. In 1999, after exchanges between the Media Council and Dr. Zeleznŷ, the character and the legal impact of these exchanges being in dispute between the parties, CET 21 terminated the Service Agreement on August 5, 1999 for what it maintains was good cause.

18. The reason given for this termination was the non-delivery of the day-log by ČNTS to CET 21 on August 4, 1999 for the following day. CET 21 thereafter replaced ČNTS as service provider and operator of broadcasting services by other service providers, with the consequence that ČNTS' broadcasting services became idle and, according to CME, ČNTS' business was totally eliminated.

(14) CME's Allegations

19. CME claims that ČNTS, the most successful Czech private broadcasting station operator with annual net income of roughly USD 30 million, has been commercially destroyed by the actions and omissions attributed to the Media Council, an organ of the Czech Republic.

20. CME claims, inter alia, that a signed merger and acquisition agreement between CME's interim parent company and the Scandinavian broadcaster and investor Scandinavian Broadcasting System ("SBS") was vitiated by these actions and omissions of the Media Council. CME accordingly suffered damage of more than USD 500 million, which was the value allocated by that agreement and by the joint venture partners to ČNTS in 1999 before the disruption of the legal and commercial status of ČNTS as a consequence of the Media Council's actions and omissions.

    CME claims that the Media Council, in breach of the Treaty, in 1996 coerced CME into amending the MoA thereby forcing CNTS to give up the exclusive right of the "use" of the broadcasting license and that the Media Council in 1999 in collusion with Dr. Zelezny lent its support to the destruction of CNTS' business.

21. The Czech Republic strongly disputes this contention and the purported underlying facts, maintaining that, inter alia, the loss of investment (if any) is the consequence of commercial failures and misjudgments of CME and, in any event, that CME's claim is part of a commercial dispute between ČNTS and Dr. Zeleznŷ, for which the protection of the Treaty is not available.

(15) The Prague Civil Court Proceedings

22. On August 9, 1999, ČNTS sued CET 21 for having terminated the Service Agreement on August 5, 1999 without cause. The Prague District Court on May 4, 2000 judged

that the termination was void; the Court of Appeal, however, upheld the validity of the termination. The Czech Supreme Court, on November 14, 2001, reversed the Court of Appeal decision and referred the law-suit back to the lower instance (the Prague City Court) for further clarification and decision. On July 4, 2002, the City Court of Prague rejected CNTS' claim. The reason given was that CNTS' petition dated August 9, 1999 as well as the modified petition dated May 15, 2002, in the view of the City Court of Prague was vague and, therefore, unenforceable. Further, the City Court held that the modified petition was not based on the decisive facts already alleged but rather on other circumstances, which were not specified in the filing dated August 9, 1999. The Tribunal understands that CNTS has appealed this decision. A decision on the appeal was still pending when these arbitration proceedings were closed on November 14, 2002.

(16) The ICC Arbitration CME Media vs. Dr. Zelezny

23. On April 26, 1999 CME Media Enterprises B.V. Amsterdam (CME Media), a corporation affiliated to the Claimant, filed a request for ICC arbitration against Dr. Zelezny, alleging that Dr. Zelezny had breached a non-competition clause and other provisions of the share purchase agreement with CME Media, under which CME Media had acquired from Dr. Zelezny the Czech corporation Nova Consulting a.s. (Nova Consulting), which in turn held 5.8% equity interest in CNTS.

24. On November 9, 2001 the ICC Tribunal rendered a Final Award ordering Dr. Zelezny to pay to CME Media USD 23.350.000 plus 5% p.a. interest on certain amounts, CME Media being ordered to return the Nova Consulting shares to Dr. Zelezny upon receipt of full payment of principal and interest.

At its closing submissions on November 12, 2002 the Claimant stated that CME eventually had received the full amount awarded in the ICC arbitration. It earlier had claimed that Dr. Zelezny had fraudulently eluded payment with assistance from Czech authorities.

(17) The London Arbitration

25. On August 19, 1999, Mr. Lauder initiated UNCITRAL Arbitration Proceedings against the Respondent under the Treaty between the United States of America and the Czech and Slovak Federal Republic Concerning on the Reciprocal Encouragement and Protection of Investment of October 22, 1991 (the "U.S. Treaty"). Mr. Lauder requested that the Respondent be ordered to take such actions as are necessary to restore the contractual and legal rights associated with Mr. Lauder's investment in the Czech Republic (the "London Arbitration"). The London Arbitration in substance dealt with the same dispute that is the object of these proceedings. The London Tribunal in its Final Award dated September 3, 2001 found that the Respondent breached the U.S. Treaty, when the Media Council disallowed a direct investment in CET21 by a Lauder- controlled company. Nevertheless, the London Tribunal rejected the claim, finding that Mr.

Lauder did not [bring] "*sufficient evidence that any measure or action taken by the Czech Republic would have had the effect of transferring his property or depriving him of his rights to use his property or even interfering with his property rights*" (London Final Award para. 222, 201, 202).

(18) Investment Dispute and Breach of Treaty

26. CME contents that the dispute between the parties is a dispute "between one contracting party and an investor of the other contracting party concerning an investment of the latter" as defined by Art. 8 (1) of the Treaty. As such, it is the position of CME that the dispute is subject to arbitration pursuant to Art. 8 (2) through 8 (7) of the Treaty.

27. CME alleges that the Czech Republic has breached each of the following provisions of the Treaty:

> *(a) "Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors" (Art. 3 (1));*
> *(b) "... each Contracting Party shall accord to [the investments of investors of the other Contracting Party] full security and protection which in any case shall not be less than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned" (Art. 3 (2)); and*
> *(c) "…Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:*
> *a) the measures are taken in the public interest and under due process of law;*
> *b) the measures are not discriminatory;*
> *c) the measures are accompanied by provision for the payment of just compensation" (Art. 5).*

B. Relief Sought

(1) Relief Sought by CME Czech Republic B.V.

28. In its Notice of Arbitration, CME requested the Tribunal to provide a "relief necessary to restore ČNTS' exclusive rights to provide broadcasting services for TV NOVA and thereby restore to CME the economic benefit available under the arrangement initially approved by the Council" (restitutio in integrum). During the proceedings, CME amended the Relief Sought and requested the Tribunal to give the Relief to the Claimant described below. The parties instructed the Tribunal that, if damages are to be awarded, the Tribunal shall not decide on the quantum at the first phase of the proceedings but at the Quantum Phase.

29. At the **First Phase** of the proceedings Claimant sought an award:

Relief Sought

1. *Deciding Respondent has violated the following provisions of the Treaty:*
   a) *The obligation of fair and equitable treatment (Art. 3 (1));*
   b) *The obligation not to impair the operation, management, maintenance, use, enjoyment or disposal of investments by unreasonable or discriminatory measures (Article 3 (1));*
   c) *The obligation of full security and protection (Art. 3 (2)); and*
   d) *The obligation to treat investments at least in conformity with the rules of international law (Art. 3 (5)); and*
   e) *The obligation not to deprive Claimant of its investment by direct or indirect measures (Art. 5); and*
2. *Declaring that Respondent is obliged to remedy the injury that Claimant suffered as a result of Respondent's violations of the Treaty by payment of the fair market value of Claimant's investment in an amount to be determined at a second phase of this arbitration;*

3. *Declaring the Respondent is liable for the costs that Claimant has incurred in these proceedings to date, including the costs of legal representation and assistance.*

30. Claimant confirmed that it has withdrawn its request for the remedy of *restitutio in integrum.*

31. In its Skeleton **Quantum** Arguments dated November 4, 2002, the Claimant requested the following relief:

A. Claimant requests a Final Award in the principal amount of $495.2 million, a reduced figure that treats Claimant as having constructively owned only 93.2% of CNTS on August 5, 1999.
   1. *Claimant's Statement of Claim Respecting Quantum requested an award in the principal amount of $526.9 million, based on a $560 million valuation of CNTS, adjusted downward to take into account Claimant's 99% ownership interest and the residual value of the company after its business was destroyed.*
   2. *Claimant reaffirmed this request for relief in the Reply Respecting Quantum, despite the $6.9 million increase in Claimant's residual value calculation between December 2001 and July 2002, because that $6.9 million decrease was offset by the addition of approximately $7 million in net cash that was on CNTS's balance sheet as of July 31, 1999, and that should have been added to the valuation in the first place.*
   3. *As previously reported, CME has received from CET21 and MEF Holding payments corresponding in total with the full amount awarded to it in the ICC arbitration against Dr. Zelezny.*
      (a) *Once CME obtains confirmation from the payers and Dr. Zelezny that these payments were made on Dr. Zelezny's behalf (without which, as matter of Czech law, CME would face vulnerabilities in treating Dr. Zelezny's obligation as definitively discharged), CME will return to Dr. Zelezny the Nova Consulting shares that CME acquired from him under that agreement and (along with these shares) the 5.8% interest in CNTS that those shares represent.*
      (b) *Claimant is uncertain whether, as a consequence of the undoing of the Nova Consulting transaction, Claimant's recovery should be reduced by only $23.35 million, the principal amount of the obligation owed, or by a measure corresponding with treating Claimant as having constructively owned only 93.2% of CNTS on August 5, 1999 (i.e., the 99% that Claimant actually did own, less the 5.8% which is expected to be returned to Dr. Zelezny), but believes that the latter form of reduction is probably more appropriate.*
      (c) *CME's right to retain these funds has not been finally determined, in that Dr. Zelezny has not exhausted all available appeals in his collateral challenge to the ICC Award in the Dutch courts. If CME were ultimately required to return these funds, and consequently entitled to receive back the 5.8% interest, the amount Claimant would be entitled to recover from Respondent would be correspondingly increased.*

4. *Accordingly, Claimant is reducing its request for relief to an award in the principal amount of $495.2 million, to take into account its receipt of this payment (subject to possible reversal if for any reason this payment must be returned in the future), derived as follows:*
   - *(a) the $560 fair market value of CNTS times 93.2% (or $521.9 million);*
   - *(b) plus 93.2% of the additional $7 million in net cash, which is cancelled out by the additional $6.9 million in Claimant's revised residual value calculation (again at an attributable rate of 93.2%);*
   - *(c) minus the unadjusted $27.5 million residual value of CNTS, which is attributable to Claimant as follows:*
     - *(i) 99% of the $18.8 million in dividends paid by CNTS since August 1999, based on CME's actual ownership interest at the time of the pay-outs, which comes to $18.6 million, and*
     - *(ii) 93.2% of the remaining $8.7 million in residual value (or $8.1 million).*

B. In addition to this principal amount, Claimant requests an award of interest at the Czech statutory rate of 12.0% per year, running from August 5, 1999 until the date of payment, or, if the Tribunal rejects this request, annual compounding of any other award of interest the Tribunal grants.

C. Claimant further requests an award of all costs and legal fees associated with this quantum proceeding, in a measure to be fixed by the Tribunal.

(2) Relief Sought by the Czech Republic

32. The Czech Republic at the **First Phase** of the proceedings sought an award that:

(1) CME's claim be dismissed as an abuse of process.

(2) And/or CME's claim be dismissed on grounds that the Czech Republic did not violate the provisions of the Treaty as alleged by the Claimant.

(3) And/or CME's claim be dismissed and/or CME is not entitled to damages, on grounds that alleged injury to CME's investment was not the direct and foreseeable result of any violation of the Treaty.

(4) And CME pay the costs of the proceedings and reimburse the reasonable legal and other costs of the Czech Republic.

33. In its Skeleton Closing Submissions Respecting **Quantum** of November 4, 2002 the Czech Republic seeks a further partial award or order in the following terms:

(a) CME's claim for compensation is dismissed as inadmissible and/or assessed at nil;
(b) Alternatively, this arbitration shall be stayed pending the outcome of the Czech legal proceedings between ČNTS and CET 21 concerning the termination of the Service Agreement;
(c) And/or, this arbitration shall be stayed pending the outcome of the proceedings in Sweden challenging the Partial Award;
(d) In the event that CME is awarded monetary compensation, such compensation shall be payable within 12 months and no enforcement proceedings shall be brought within that period;
(e) And, in the event that CME is awarded monetary compensation, such compensation shall incur simple interest at US-$ LIBOR to the date of payment;
(g) All issues respecting costs shall be reserved until after publication of the further partial award respecting quantum.

C. Procedure

I. The appointment of the Tribunal

34. After having initiated the arbitration proceedings, the Claimant appointed Judge Stephen M. Schwebel, Washington, and the Respondent JUDr. Jaroslav Hándl, Prague, as party-appointed arbitrators. Both arbitrators appointed Dr. Wolfgang Kühn, Düsseldorf, as Chairman of the Arbitral Tribunal on July 19, 2000, which appointment was accepted by the Chairman on July 21, 2000. On September 19, 2000, Dr. Hándl resigned as arbitrator (after the Tribunal rendered a Partial Award on September 13, 2001 (PA), which Dr. Hándl refused to sign). On October 18, 2001 the Respondent appointed Mr. Ian Brownlie C.B.E., Q.C. as arbitrator.

II. The First Phase of the proceedings

(1) Procedural Orders (First Phase)

35. During the first phase of the proceedings, the Tribunal issued various procedural orders in particular related to the exchange of written submissions, the language of the proceedings and the production of documents, hearing dates and payment of costs (Partial Award para. 34 seq.).

36. In accordance with Art. 16 of the UNCITRAL Rules, the place of arbitration was determined to be Stockholm. The Tribunal convened a procedural meeting with counsel of the parties on November 17, 2000. The Tribunal and the parties agreed on the Arbitrators' fees (hourly rates).

37. On September 22, 2000 the Claimant submitted its Statement of Claim.

38. On November 9, 2000 the Respondent submitted its Statement of Defense. In its Statement of Defense the Respondent raised, inter alia, the defense of jurisdiction stating that the Tribunal lacked jurisdiction, or, in the alternative, that CME's claim was inadmissible.

39. On November 14, 2000 the Claimant submitted a Request for Production of Documents describing the requested documents broadly as Media Council's records and documents (Partial Award para. 38), which request was contested by Respondent on November 16, 2000 as being too broad and unsubstantiated and, therefore, not in compliance with the International Bar Association Rules on Taking Evidence in International Commercial Arbitration adopted on June 1, 1999 ("IBA Rules").

(2) The Procedural Hearing (First Phase)

40. For the hearing of November 17, 2000, the parties jointly submitted an agenda. Under the first topic, Claimant suggested the co-ordination of this arbitration with the Lauder

vs. the Czech Republic arbitration (the London Arbitration). The Claimant's proposal to have the two proceedings inter-linked in their timing was not pursued because the parties were in disagreement.

41. In respect to this and other procedural issues the Tribunal, on November 17, 2000, issued Order No. 5. The Tribunal decided that no separate hearing on jurisdiction or the admissibility of the claim was to be held.

42. In respect to Procedures for Taking Evidence, the parties proposed to apply the IBA Rules with the exception of certain non-agreed provisions (Partial Award para. 45). The parties agreed that witness statements and testimony provided in the London Arbitration may be referred to in this arbitration.

43. In accordance with Art. 15.1 of the UNCITRAL Arbitration Rules, the Tribunal decided to conduct the arbitration in the manner it considers appropriate. For this purpose, the Tribunal decided, to the extent appropriate, to apply the IBA Rules.

44. With respect to the determination of the amount of any damage award, the parties jointly informed the Tribunal that they were in agreement that the hearing on the merits should be devoted to resolving issues of liability and the appropriate form of remedy. If the determination of a quantum of monetary damages was necessary - for example, because the Arbitral Tribunal were to order a remedy referred to in para. 111 or para. 112 of Claimant's Statement of Claim - that quantum should be established in further proceedings, so that the briefs and witness statements will not at this stage deal with the amount of monetary damages.

45. The Claimant submitted its Reply Memorial on December 22, 2000 and the Respondent its Sur-Reply on February 14, 2001.

46. By Order No. 6 dated December 22, 2000, the Tribunal by majority decision instructed the Respondent to produce certain documents requested by the Claimant, deleting however certain documents from the list requested (Partial Award para. 53).

(3) The Tribunal's Decision on Interim Remedies (First Phase)

47. On March 3, 2001 the Arbitral Tribunal by Order Q 8 decided not to take a decision on Interim Remedies. The Tribunal stated inter alia:

> *In respect to the Respondent's request regarding the disclosure by the Claimant of all pleadings, submissions and evidence submitted by CME Media Enterprises B.V. in the ICC Arbitration Proceedings between CME Media Enterprises B.V. and Dr. Zelezný, the Tribunal is not in a position to order the requested discovery, as the Parties of the ICC Arbitration Proceedings are different from the Parties to these proceedings. The Tribunal understands, however, that the ICC Award of the afore-mentioned proceedings was published on the internet on the CME pages. The Arbitral Tribunal, therefore, instructs the Claimant to submit as soon as possible to the Arbitral Tribunal and to the Respondent the ICC Award to the extent available to the public on the internet. The Tribunal assumes that the*

Respondent's demand for disclosure of the ICC proceeding will be sufficiently met by the disclosure of the ICC Award. (PA para. 64)

48. The Claimant in accordance with Order No. 8 submitted to the Tribunal the ICC Award. The Respondent declared:

> *"The Czech Republic continues to participate in this Arbitration under protest and reserves all its rights, in particular its rights under Swedish Arbitration Act, Art. V (2) (b) of the New York Convention 1958 and principles of public policy generally."*

(4) Further conduct of proceedings (First Phase)

49. The parties submitted 22 written witness statements and attached to their submissions copies of some 300 documents comprising several thousand pages. They further attached binders comprising several thousand pages of authorities in support of their respective memorials.

(5) The Stockholm Hearing (First Phase)

50. From April 23, 2001 to May 2, 2001 the hearing took place in Stockholm. Ten witnesses were heard (Partial Award para. 72). The parties presented their case and submitted post-hearing briefs. The parties submitted to the Tribunal the verbatim record of the examination of witnesses taken at the London Arbitration.

III. The Partial Award

51. On September 13, 2001 the Tribunal rendered a Partial Award, signed by Dr. Wolfgang Kühn and Judge Stephen M. Schwebel, whereas Dr. Jaroslav Handl refused to sign and submitted a dissenting opinion, dated September 11, 2001.

52. The Tribunal decided as follows:

> *1. The Respondent has violated the following provisions of the Treaty:*
>
> *a. The obligation of fair and equitable treatment (Article 3 (1));*
> *b. the obligation not to impair investments by unreasonable or discriminatory measures (Article 3 (1));*
> *c. the obligation of full security and protection (Article 3 (2));*
> *d. the obligation to treat foreign investments in conformity with principles of international law (Article 3 (5) and Article 8 (6), and*
> *e. the obligation not to deprive Claimant of its investment (Article 5); and*
>
> *2. The Respondent is obligated to remedy the injury that Claimant suffered as a result of Respondent's violations of the Treaty by payment of the fair market value of Claimant's investment as it was before consummation of the Respondent's breach of Treaty in 1999 in an amount to be determined at a second phase of this arbitration;*

53. The Tribunal decided on the costs for the First Phase (Partial Award para. 624). The Tribunal further stated:

This Partial Award is final and binding in respect to the issues decided herein. The legal seat of the proceedings is Stockholm, Sweden.

The Tribunal will continue the arbitration proceedings in order to decide on the quantum of the Claimant's claim upon request of one of the Parties.

IV. The Quantum Phase of the Proceedings

(1) Continuation of proceedings

54. On September 17, 2001 the Claimant requested the continuation of the arbitration proceedings related to the quantum of the Claimant's case. The Tribunal by letter dated September 20, 2001 instructed the parties that the arbitration shall continue.

(2) Order No. Q 1 dated October 30, 2001

55. On October 19, 2001 the Respondent requested adjournment of the proceedings sine die. On October 19, 2001 the Claimant requested rejection of a stay of the proceedings.

56. On October 30, 2001 the Tribunal issued the Order No. Q 1 (excerpt).

1. *The arbitration proceedings related to the quantum shall continue. The Respondent is invited to present arguments for an adjournment sine die of the proceedings within two weeks after having received this Order. The Claimant is invited to respond within two weeks.*
2. *The Claimant shall submit a Statement of Claim Related to the Quantum, in accordance with Article 18 of the UNCITRAL Arbitration Rules. The Claimant shall annex to this Statement of Claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit. The Claimant shall submit its Statement of Claim Related to the Quantum not later than January 15, 2002.*
3. *The Respondent shall submit a Statement of Defence Related to the Quantum in accordance with Article 19 of the UNCITRAL Arbitration Rules. The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 18 § (2) UNCITRAL Arbitration Rules). The Respondent shall annex to its Statement of Defence the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit. The Respondent shall submit its Statement of Defence not later than March 28, 2002.*
4. *Each Party shall submit written witness statements, experts' opinions and authorities in support of its respective pleadings within the respective deadline for the submission of its written Statement as stipulated above.*
5. *Both Parties shall finally comment, if they wish so, on their respective opponent's submission, the Claimant by April 19, 2002 and the Respondent by May 10, 2002.*
6. *The Tribunal sets the dates for a hearing on the merits of the quantum claim on June 10 through June 21, 2002 in Stockholm. At this hearing, witnesses and/or experts proposed by the Parties shall be heard.*
7. *Without changing the legal seat of the arbitration, the place of the hearings may be changed to another place upon agreement between the arbitrators and the Parties.*

(3) Order No. Q 2 dated November 6, 2001

57. In a telephone conference on November 6, 2001 between the Chairman and the Parties' representatives the time schedule was agreed in amendment of Order No. Q 1.

1. *The Respondent will present arguments for an adjournment sine die of the proceedings until November 27, 2001.*

2. *The Tribunal sets a hearing on this issue and other procedural matters which may arise with the Parties' legal representatives in London on January 22nd, 2002 – 9,00 a.m. The location will be communicated to the Parties' representatives in due course.*
3. *Unless amended herein Order No. Q 1 remains unchanged.*

(4) Procedural Hearing in London on January 22, 2001 and Order No. Q 3

58. At the procedural hearing the parties discussed the further conduct of the proceedings and in particular the Respondent's request for Adjournment of Quantum Phase. On February 14, 2002 the Tribunal issued the Order No. Q 3 (excerpt).

A. The Respondent requested the Tribunal to adjourn the quantum phase of these proceedings (these proceedings hereafter also "the Stockholm proceedings") sine die and until the Respondent's annulment application at the Svea Court of Appeal in Stockholm and CNTS' claims against CET 21 at the Prague Court of first instance have been determined.

I. The Respondent based its request on the ground that the Respondent on December 12, 2001 filed an application with the Svea Court of Appeal in Stockholm requesting that the Partial Award be annulled. The grounds for annulment were that one arbitrator in the view of the Respondent was effectively excluded from essential parts of the deliberations of the Tribunal; that the Tribunal failed to apply the law that it was required to apply by the Treaty, namely, Czech Law; that the Tribunal lacked competence to rule on the merits of the case because (i) the London Proceedings were commenced before the Stockholm Proceedings; (ii) the Stockholm Proceedings concerned the same investment, the same alleged actions and omissions in breach of substantially the same treaty obligations as those before the London Proceedings; (iii) the parties to the Stockholm Proceedings and the London Proceedings were identical on the Respondent`s side and for all practical purposes the same on the Claimant´s side; (iv) the possibility of a contradictory outcome of the two proceedings was legally impermissible under the Dutch Treaty; (v) the "London Award", was rendered before the Partial Award; and (vi) the actual contradictory outcome of the Partial Award leads to legally unacceptable results, further that the Tribunal decided upon issues determining quantum, contrary to the instruction of the parties, thus acting beyond the scope of its mandate. The Tribunal also analysed and decided upon other legal grounds not invoked by the parties.

Further the Respondent argued that the outcome of Czech Civil Proceedings will have an effect on Quantum.

II. The Claimant opposed the Respondent's request for adjournment. The Claimant was of the view that it would be seriously prejudiced by an adjournment. It had been suffering enormous prejudice since it lost its most central asset, which CNTS was, in Central Europe. Its profits were a source of capital to fund development and expansion of Claimant's business elsewhere and the loss of CNTS brought Claimant to the brink of financial failure.

The Claimants' view was that an adjournment of an arbitration is an extraordinary matter, neither supported by the principles of international law, nor UNCITRAL Arbitration Rules nor the Swedish Arbitration Act. To the contrary, the Dutch Treaty entitles Claimant to "compensation without delay".
The Claimant rejected the Respondent's grounds for annulment of the Award. The Czech litigation between CNTS and CET 21 has no effect on the Tribunal's determination of the quantum of damages.

III. The Tribunal's Analysis [of the request for adjournment]

The parties are in agreement that the law applicable to these proceedings does not provide a provision related to the request for a stay of the arbitration proceedings. The Dutch Treaty which governs this arbitration says nothing on this point. The UNCITRAL Arbitration Rules equally leave it to the Tribunal to decide such issues. The Swedish Arbitration Act, which governs the conduct of these proceedings (to the extent not provided for by the UNCITRAL Arbitration Rules and the specific rules agreed upon between the parties) is equally silent. Therefore it is a matter for the Tribunal to decide, in its discretion, which is in compliance with Article 15.1, UNCITRAL Arbitration Rules.

The Claimant's interest in arbitration proceedings at normal speed must be balanced against the Respondent's view that it would be inappropriate to deal with quantum before the status of the Partial Award has been established by the Swedish Courts. Further the Claimant's desire for an arbitration without delay also must be weighed against the relevance of the Czech proceedings for the Respondent's request for a stay.

The Tribunal considered the time schedule for the Swedish proceedings and that Section 43 of the Swedish Arbitration Act of 1999 provides the possibility for an appeal be considered by the Swedish Supreme Court as a matter of precedent. The Tribunal concluded that a stay of these arbitration proceedings until the final and binding judgment of the Swedish Courts is rendered therefore is uncertain in time.

The Respondent's grounds for the annulment of the Partial Award had already been to a large extent dealt with (and rejected) by the Tribunal in the Partial Award. There was no need for the Tribunal to revisit these arguments again. A stay would have been in conflict with Article 5 (c) of the Treaty's requirement for "compensation without delay".

The Tribunal's view was that also a decision of the Czech Court of first instance was uncertain in time and in respect to its content. It is subject to appeal. The Tribunal at that point of time had no basis for considering the outcome of the Czech civil proceeding. This uncertainty did not allow a stay.

The Tribunal, therefore, decided that the arbitration proceedings shall continue at a normal pace, as it is the duty of this Tribunal to both of the Disputing Parties to determine the disputes between them as expeditiously and efficiently as practicable. (see S.D. Myers, Inc. vs. Government of Canada, NAFTA Arbitration under the UNCITRAL Arbitration Rules Procedural Order No. 18 dated February 26, 2001).For these reasons the Respondent's Request for Adjournment of Quantum Phase was denied.

*B. The Claimant's request for a (limited) written Statement by the Tribunal related to the post-hearing exchanges **within** the Arbitral Tribunal (not to address the substance of the deliberations) was rejected by the Tribunal.*

*The Tribunal decided not to release the internal process of its deliberations to the parties unless instructed to do so by the competent Swedish courts or upon instruction by **both** parties, which was not the case.*

C. The Respondent's Document Request dated January 22, 2002, comprising a 30 page list of 15 categories of documents, was decided by the Tribunal as follows:

(a) The Tribunal decided to agree to this Request. The Claimant is ordered to submit the requested documents to the Respondent by February 20, 2002.

(b) The Claimant is requested to submit argument in support of its position that unqualified compliance with the Respondent's document request will be pointless and unduly burdensome . In this respect, the Claimant shall specify the difficulties in complying with the Request in respect to each document or

category of documents which are not obtainable or in respect to which there are obstacles to produce these documents factually, practically or, as the case may be, legally.

(c) The Tribunal will decide on the Claimant's request to exclude certain documents from disclosure after receipt of the Respondent's comments on this request.

(d) The documents to be disclosed under this Order shall be submitted by the Claimant to the Respondent in a documented and orderly form. The parties shall ensure that the Tribunal or the Tribunal's expert, as the case may be, can have access to the documents, should the Tribunal decide to review or have reviewed certain documents in dispute.

Further the Tribunal issued the agreed timetable for the parties' submissions.

(5) Order Q 4 of the Tribunal of February 19, 2002 on the Claimant's Request to Limit the Production of Documents

59. By submission dated February 1, 2001, the Claimant requested the Tribunal to limit the production of documents by ordering that the Claimant is not obligated to produce (i) documents concerning CME and the subsidiaries for years after 1999, and (ii) documents concerning ČNTS, and other CME affiliates' internal thinking about how to handle matters with Dr. Vladimir Zelezný. The Respondent opposed the Claimant's request. The Tribunal decided as follows:

> *The Claimant was instructed to disclose the Post-1999 CME and subsidiary information to the Respondent. This disclosure is limited to that information that has been disclosed or should have been disclosed in an ordinary conduct of business to CME Limited auditors and should include in particular the information that has already been disclosed and is generally disclosed to the SEC and financial analysts. The Respondent was instructed to confirm that it will not disclose the received information and the documentation from the Claimant to any Third Party including Dr. Zelezný and that the Respondent's advisors shall enter into a suitable Confidentiality Agreement. The Claimant should provide such level of information as is generally provided in the normal conduct of business to the company's auditors.*
>
> *The Claimant was instructed to submit all documents related to facts and findings concerning their relations with Dr. Vladimir Zelezný, except internal strategy papers for dealing with Dr. Vladimir Zelezný.*

(6) Order No. Q 5 dated February 28, 2002

60. The Tribunal issued Order No. Q 5 in clarification of Order No. Q 3.

(7) Order No. Q 6 dated April 16, 2002

61. Having received the Respondent's request for a revised time-table by its submission dated April 9, 2002 and the Claimant's response dated April 15, 2002, the Tribunal, issued the following revised time-table by Order No. Q 6

> *1. The Respondent is instructed to identify the precise areas where the Claimant's disclosure in the Respondent's view has failed to comply with the Tribunal's Orders Nos. Q 3 and Q 4 and to specify the missing documents without delay, at the latest by April 30, 2002.*

2. The Claimant is instructed to provide the requested documents in compliance with the rules set out under the Tribunal's Orders Nos. Q 3 and Q 4 or to declare that certain documents are not available for disclosure and give reasons for that without delay, at the latest by May 15, 2002.

Further the Tribunal gave instructions for the time schedule of the parties' submissions, which time schedule was amended by the Tribunal Order No. Q 7.

(8) Order No. Q 7 dated April 23, 2002

62. The time schedule for the proceedings was finally agreed with the parties' representatives by modifying Order No. Q 7:

1. No. 1 and No. 2 of the Order dated April 16, 2002 remain unchanged.
2. The Respondent shall submit its Response to the Claimant's Statement of Claim respecting the Quantum dated December 17, 2001 by Friday, June 28, 2002.
3. The Claimant's final submission and reply to the Respondent's Response shall be made by July 25, 2002.
4. The Respondent's final submission shall be made by August 16, 2002.
5. The hearing shall start on September 2, 2002 and shall run until September 13, 2002.

(9) Order No. Q 8 dated June 3, 2002

63. In receipt of the Respondent's submission dated April 30, 2002 with a specification of missing documents and the Claimant's response thereto dated May 15, 2002, and further in receipt of the Respondent's request dated May 29, 2002 to order the Claimant to disclose further documents the Tribunal rendered Order Q 8.

64. The Tribunal clarified the scope of disclosure concerning the Respondent's Document Request dated February 20, 2002. The Claimant was not obligated to submit privileged documents such as documents originated by its in-house or external legal advisors to the extent that such legal advice is related to legal proceedings or disputes between the Claimant and the Respondent and/or its agencies including the Media Council. Legal opinions related to other disputes shall be disclosed, unless restricted by the Tribunal (as for example in respect to disputes with Dr. Zelezny) or privilege for other reasons is granted.

65. Documents of advisors to Claimant shall be disclosed to the extent that these documents are in the possession of the Claimant and/or its affiliated companies or should have been transmitted by the advisor to the Claimant in the ordinary course of business (no advisor's internal working papers are to be disclosed).

66. The redaction of documents shall be limited to privileged subjects as identified in order No. Q 4 related to Dr. Zelezny or as otherwise specified. The Claimant was not obligated to disclose its internal strategizing or advice received about the Claimant's and/or its affiliated companies' legal disputes and proceedings versus the Respondent and/or its agencies.

67. The Claimant was instructed to submit CME Ltd. Board of Directors' minutes dated June 14, 1999, June 28, 1999, October 25, 1999, and November 17, 1999 and the minutes of headquarter's meeting dated December 5, 1996 unredacted except in respect to privileged subjects as defined in para. 1 and 4 above and the forensic investigation report by Deloitte & Touche of April 1999 unless privileged.

68. The Claimant was instructed to submit the agreements related to the transferring of shares or participation interests as itemized by the Respondent in its request 8 dated May 29, 2002 unless the Claimant could specify that the afore-mentioned agreements are not in the Claimant's possession or cannot be obtained by the Claimant by due effort or are privileged. The Claimant was instructed to submit the written proposal provided by SBS to CME Ltd. in February 1999 as well as the Bear Sterns fairness opinion and the SBS disclosure schedule, unless the Claimant lacked possession of these documents and cannot obtain possession by due effort.

(10) Order No. Q 9 dated June 14, 2002

69. On June 11, 2002 the Respondent requested that the Tribunal shall order the Claimant to release two of CME's former CEOs, Mr. Fertig and Mr. Delloye, who gave testimony at the First Phase, from their confidentiality undertakings for the Quantum Phase, which request the Claimant rejected. The Tribunal rendered Order No. Q 9 (excerpt):

> *1. The Tribunal recalls that under Article 24.1 UNCITRAL Arbitration Rules, each party shall have the burden of proving the facts relied on to support its claim or defence. This includes the burden of providing evidence by documents or witnesses.*
>
> *2. According to Article 4.2 of the IBA Rules of Evidence any person may present evidence as witness, including a Party or Party's officer, employee or other representative. According to Article 4.3 of the IBA Rules of Evidence it shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses.*
>
> *3. CME's two former CEO's, rendered extensive written and oral witness statements in the first stage of the proceedings and were cross-examined at length at the hearing in Stockholm. The Claimant waived the confidentiality undertakings for the purpose of these witness statements and the testimony given at the Stockholm hearing and the Claimant further announced in its letter dated June 12, 2002 that it will not seek to preclude any testimony by the witnesses on the basis of Claimant's confidentiality rights.*
>
> *4. The Tribunal is of the view that the Claimant is not entitled to waive its confidentiality rights in respect to the two witnesses only for certain selected parts of the proceedings. The Respondent is free to interview the two witnesses on the basis of Article 4.2 and Article 4.3 of the IBA Rules of Evidence. The Claimant is ordered to instruct the two witnesses that the Claimant's confidentiality rights are waived except to the extent that the witnesses are not obligated to disclose Claimant's and/or CME's information which might be privileged in accordance with the Tribunal's Order No. Q 8.*
>
> *5. The Parties were advised that taking evidence in this stage of the proceedings is restricted to the issue of Quantum. The Tribunal will decide at the Evidentiary Hearing whether and to what extent the testimony of experts and witnesses would be relevant, material and admitted for this purpose. The Parties are further advised, that the Tribunal may apply Article 9.4 and 9.5 of the IBA Rules of Evidence.*

(11) Order No. Q 10 dated July 9, 2002

70. On July 3, 2002 the Claimant requested issuance of an interim order providing that

> the issue to be resolved in this quantum phase of the arbitration is limited to the determination of the fair market value of 99 % of CNTS as of 1995, as set forth in para. 624 (2) of the Partial Award, along with the ancillary matters such as the determination of interest and any offsetting recoveries obtained through Czech civil and administrative proceedings; and
>
> the Tribunal will neither take evidence or testimony on, nor will otherwise address, arguments by Respondent seeking further adjudication of issues resolved in the Partial Award, including the preclusive effect of the Lauder arbitration, causation, and Claimant's standing to assert a claim for the 1996 breach.

71. The Tribunal issued the following Order No. Q10:

> *1. The Tribunal is of the view that the objects of the quantum phase are sufficiently described in the Partial Award and the Tribunal's consequential Orders for the quantum phase.*
> *2. The parties may decide in their own discretion what arguments to be submitted and what means of proof to be presented within the given scope of the quantum phase taking into account the time frame for the hearing September 2 – 13, 2002.*
> *3. The Tribunal requests the parties' representatives to make a joint proposal and time table comprising the following elements for the hearing.*
> *(1) Oral presentation of the respective position by both parties being a Summary of the written pleadings.*
> *(2) Experts and witness hearings.*
> *(3) Concluding oral submissions.*
>
> *The time used shall be shared equally and the Tribunal shall have sufficient time for questioning the experts and witnesses.*

(12) Order No. Q 11 dated August 1, 2002

72. The Tribunal considered the Respondent's request dated July 31, 2002 to order the Claimant to provide for the appearance of certain witnesses and the Claimant's response dated July 31, 2002 and issued Order No. Q 11 (excerpt):

> *The Tribunal orders the Claimant in accordance with Article 4.11 of the IBA Rules of Evidence to use its best efforts to provide for the appearance of the following individuals for testimony at the forthcoming evidentiary hearing beginning on September 2, 2002 in London: Mr. Ronald Lauder, Mr. Len Fertig, Mr. Michel Delloye, Ms. Laura DeBruce, Dr. Martin Radvan or alternatively Mr. Jan Vavra, Mr. Harry Sloan or alternatively Mr. Woody Knight.*
>
> *The Respondent shall at the latest by August 16, 2002 identify with greater specificity the subjects relevant to quantum on which they propose to examine these witnesses, preferably also by listing the key questions relevant to quantum for the witnesses (Art. 25.2 UNCITRAL Arbitration Rules).*

The Parties are in particular referred to the Tribunal's Order No. Q 9 para. 8 dated June 14, 2002 and Order No. Q 10 last sentence, dated July 9, 2002, which the Parties also shall take into account when agreeing on a time table for the forthcoming hearing.

(13) Order No. Q 12 dated August 7, 2002

73. In receipt of the Respondent's request for additional disclosure of documents dated August 5, 2002, the Tribunal issued Order Q 12.

74. The Tribunal instructed the Claimant to disclose certain specified documents or categories of documents in compliance with the previous Tribunal's Orders related to the disclosure of documents. If the Claimant was not possessor or owner of the respective documents, the Claimant was obligated to use its best efforts to provide the documents.

75. The documents instructed to be disclosed included specific indicative offers made by made by certain investors for an investment in and/or the acquisition of shares of CME Ltd. or for a merger with CME Ltd. between December 1998 and August 5, 1999.

76. Further the Tribunal instructed the Claimant to provide unredacted versions of nine exhibits specified by Respondent unless the redactions were justified due to privilege in accordance with the Tribunal's previous orders.

77. Further the Tribunal instructed the Claimant to provide additional specific documents in accordance with the Respondent's request, which list comprises some further fifteen identified documents or category of documents.

78. The Tribunal advised the Respondent that the request for additional disclosure of documents was not in compliance with the agreed time table for the proceedings and should not cause any delay.

(14) Order No. Q 13 dated August 17, 2002

79. The Tribunal considered the Claimant's submissions dated August 12, 15, 16, 2002 and the Respondent's submissions dated August 14, 15, 2002 dealing with the timing of the forthcoming hearing. The Tribunal took note of the Respondent's proposal to restrict the forthcoming hearing to the cross examination of factual witnesses, which proposal deviated from the time-table for the hearing as agreed between the Tribunal and the parties. The Tribunal noted that the Respondent had not yet complied with the Tribunal's instruction by Order No. Q 11 dated August 1, 2002 to specify the subjects of witness interrogation and requested the Respondent again to comply with the instruction without delay. The Tribunal issued the following Order Q 13:

The Tribunal established the time schedule for the parties for the evidentiary hearing in London scheduled from September 2 to September 13, 2002.

The Tribunal informed the parties that the Tribunal is prepared to resume its sittings on November 11, 2002 through November 16, 2002 for such elements of the hearing which remain uncompleted namely any examination of factual witnesses and closing arguments.

(15) Clarification of Order No. Q 13 dated August 21, 2002

80. In response to the Claimant's request dated August 20, 2002 for clarification of the Tribunal's Order Q 13, the Tribunal advised the parties that Order No. Q 13 does not change the Tribunal's prior orders directing that each party has half of the allocated hearing time. The Tribunal advised that it may deviate from this principle, if appropriate, to safeguard each party's being given an equal opportunity to present its case in an appropriate manner. This shall apply in particular in respect to the cross-examination of the parties' experts Dr. Copeland and Mr. Paine.

(16) Order No. Q 14 dated October 15, 2002
(issued after the London Hearing)

81. The Tribunal in receipt of the Respondent's request dated October 11, 2002 for a postponement of the hearing for closing arguments scheduled for November 11 – 14, 2002, and the Claimant's response thereto, dated October 13, 2002 and the Respondent's letter to the Tribunal, dated October 14, 2002, adopted Order No. Q 14 (excerpt).

The Respondent´s request for a postponement of the final hearing is denied, as it has been scheduled for several months and the parties, in the view of the Tribunal, have had and have sufficient time to prepare their final pleadings. No new facts may be submitted since the evidentiary hearing was closed on September 13, 2002.
The Tribunal will deal with any payments received by the Claimant, to the extent appropriate, in the final hearing and the Final Award. The Tribunal cannot defer the final hearing on the grounds that the Czech State Prosecutor´s investigations or that the proceedings in the Svea Court of Appeal are pending, as both proceedings are legally unrelated to this arbitration. The Tribunal has the duty towards both parties to conduct these proceedings at a normal pace and in accordance with the agreed time table.

(17) The Parties' Submissions (Quantum)

82. The Parties submitted their written pleadings in accordance with the agreed time schedules.

1. The Parties' Briefs

83. The parties submitted the following briefs:

- Statement of Claim Respecting Quantum dated December 17, 2001
- Respondent's Statement of Defence Respecting Quantum dated July 2, 2002
- Claimant's Reply Respecting Quantum dated July 29, 2002
- Respondent's Sur-Reply Respecting Quantum dated August 19, 2002
- Claimant's Skeleton Argument Respecting Quantum dated November 4, 2002
- Respondent's Skeleton Closing Submissions dated November 4, 2002

2. The Parties' Expert Reports and Witness Statements

84. The Parties submitted (inter alia) expert's reports and witness statements

(a) The Claimant's expert reports:
- Monitor CNTS Valuation Report (Thomas Copeland) December 14, 2001
- Monitor Supplemental Report July 28, 2002
- Monitor Valuation of CNTS dated September 9, 2002

Claimant's witness / expert declarations:
- Milan Cimirot
- Thomas Copeland
- Michael Finkelstein
- David Jelinek
- Fred Klinkhammer (two declarations)
- Petr Kotrlik
- John A. Schwallie (two declarations)
- David Stogel (two declarations)

(b) The Respondent's expert reports and opinions
- Rothschild CNTS Valuation Report July 1, 2002
- Spectrum "Opinion Paper" dated August 19, 2002
  and Issues affecting TV Nova / CNTS valuation dated September 11, 2002
- Rothschild Supplemental Report dated August 19, 2002
- Legal Opinion Prof. Schreuer / Prof. Reinisch dated June 20, 2002
- Opinion on Czech law by Prof. Dedic

85. The Respondent further submitted

(a) Affidavits/witness statements rendered in the ICC Arbitration of

- Fred Klinkhammer	August 16, 1999
	September 28, 1999
	April 7, 2000
	April 26, 2000
- Laura DeBruce	April 26, 2000
- Howard Knight	June 27, 1999
- Petr Kotrlik	April 26, 2000
- Petr Sladecek	April 26, 2000

(b) Daily Transcripts of the ICC Proceedings of the hearings on April 29, 2000 till May 5, 2000 pages 1 – 850.
(c) CME Media's exhibits (selected) of ICC Arbitration
Dr. Zelezny's exhibits (selected) of ICC Arbitration
(d) The London Arbitration Final Award
(e) Agreed Minutes on the Consultation on the Interpretation of the Treaty dated June 17, 2002.

86. The parties submitted extensive documentation and interpretations of their experts' reports and numerous authorities in support of their legal positions (several thousand pages). According to the parties' information the documents disclosed by Claimant to Respondent in two data rooms in Prague and London comprised more than one million documents.

(18) The Netherlands and Czech Governments' Delegations agreed "Common Position" on the (Dutch) Treaty

87. Art. 9 of the Treaty provides that either State can at any time call on the other for "*consultations*" with a view to resolving any issue of interpretation and application of the Treaty. After the issuance of the Partial Award, the Czech Republic decided to call for such consultations with the Kingdom of the Netherlands. The Czech Government made clear its concern over a number of aspects of the Partial Award which were in its view inconsistent with the Treaty. It also made clear the intention of the Czech Republic to challenge the Partial Award.

88. Three issues in particular arose from the Partial Award which the Czech Government considered were suitable for consultation under Article 9 of the Treaty:

(1) The correct interpretation of Article 8.6 of the Treaty, which specifies the law to be applied by a tribunal resolving an investment dispute.
(2) The manner in which the Treaty should be applied to claims of predecessors of an investment bringing claims in an investment dispute; and
(3) The manner in which the Treaty should be applied to investment disputes which had previously been raised by an indirect holder of the same investment of different nationality under a comparable BIT.

89. Representatives of the Netherlands and the Czech Republic held a series of meetings to discuss the issues raised and decided at their last meeting in The Hague on 4-5 April 2002 that they had reached "common positions" on all three issues, which common positions should be recorded in the Agreed Minutes dated July 1, 2002. The Agreed Minutes have been formally signed and exchanged between the two Governments, and are in the view of the Respondent binding statements on the meaning and application of the Treaty.

90. The common positions of the two contracting parties on the three issues are as follows (excerpt):

(i) On the issue of investment disputes and interpretation of Article 8.6 of the Agreement [i.e. the Treaty]:

91. The arbitral tribunal shall decide on the basis of the law. When making its decision, the arbitral tribunal shall take into account, [in particular] though not exclusively, each of the four sources of law set out in Article 8.6. The arbitral tribunal must therefore take into account as far as they are relevant to the dispute the law in force of the contracting party concerned and the other sources of law set out in Article 8.6. To the extent that there is a conflict between national law and international law, the arbitral tribunal shall apply international law.

(ii) On the issue of the assignment of claims arising under the Agreement

92. Each investor which qualifies under the IPPA [i.e. the Treaty] is entitled to the protection of the IPPA from the time the investment is acquired by that investor. Investors are free to assign their investments protected by the IPPA. A claim which the first investor has under the IPPA may pass to a second qualifying investor if that claim has been transferred to the second investor either expressly or impliedly by operation of the law applicable to the transfer and the claim so transferred will be available to the first investor. If the first investor's claim does not so pass to the second investor, the first investor may still be able to make the claim.

(iii) On the issue of the application of the Agreement where another IPPA [i.e. BIT] is invoked:

93. Although it might be undesirable that investors submit the same subject matter to different arbitral tribunals under different IPPA's, the Treaty does not deal with this situation. If the contracting parties wish to address this issue further, it could be dealt with either by future amendment of the IPPA or within the framework of a multilateral investment protection agreement, taking into account the complexity of the matter and the various situations which may occur.

(19) The Evidentiary Hearing (Quantum Phase)

94. At the evidentiary hearing in London from September 2 till September 13, 2002 (11 days of hearing) the parties presented their case and interrogated the witnesses / experts: Fred Klinkhammer, Howard Knight, Michael Finkelstein, John Schwallie, Petr Kotrlik, Len Fertig, Laura Debruce, Milan Cimirot, Ronald Lauder, David Stogel, Thomas Copeland, Michael Vanderkaden, Michael Delloye, Kip Meek, Jonathan Paine, John Brimacombe.

95. The parties after having submitted their skeleton closing arguments on November 4, 2002 submitted their final pleadings at the hearing in London November 11 - November 14, 2002. At the end of the hearing the Tribunal declared the arbitration formally closed (Art. 29 (1) UNCITRAL Arbitration Rules).

II.
The Position of the Claimant (Quantum)

I. Scope of issues Quantum Phase (Claimant)

(1) Scope of issues to be determined in the Quantum phase

96. In accordance with the parties' agreement, the first phase of this proceeding resolved all issues of liability and the appropriate form of relief to be awarded (Partial Award para. 48, 615). The sole remaining issue to be determined in this "quantum" phase of the arbitration is what constitutes full reparation for the "genuine value" of the Claimant's investment in the Czech Republic.

97. The Tribunal has already determined, correctly, that the appropriate form of relief is full reparation corresponding with "the fair market value of Claimant's investment as it was before consummation of Respondent's breach of the Treaty in August 1999." *Id.* para. 618. Claimant's investment, which the Respondent caused to become nearly valueless by its conduct in violation of the Treaty, was its 99% ownership interest in ČNTS, the operational and economic centerpiece of TV Nova. The value of the Claimant's lost investment is properly calculated as 99% of the value of ČNTS as of August 5, 1999, the day ČNTS' business was destroyed, reduced by the residual value of ČNTS that the Claimant could capture thereafter.

98. The definition of fair market value has been well established in international law as "the price that a willing buyer would pay a willing seller in circumstances in which each had good information, each desired to maximize his financial gain, and neither was under duress or threat." *Starrett Housing Corp. v. Iran (Final Award)*, Award No. 314-24-1 (1987), *reprinted in* 16 Iran-U.S. Cl. Trib. Rep. 112, 201; *see also* Jerome Ortscheidt, *La réparation du dommage dans l'arbitrage commercial international* 199 (2001). The Claimant's submission presents four different approaches for assessing the value of Claimant's investment.

99. The fair market value of ČNTS as of August 5, 1999 was USD 560 million. Claimant's damages are determinable from this figure by subtracting (a) 1% to take account of Claimant's 99% interest, (b) 5.8% deemed to be regained from Dr. Zelesny and (c) an additional sum to take account of ČNTS' residual value after its business was destroyed.

(2) The four approaches to value ČNTS are as follows:

(a) The Value Ascribed to ČNTS by SBS as a Willing, Arms'-Length Purchaser

100. One indication of ČNTS' fair market value is the value that a willing purchaser actually ascribed to ČNTS at the time, in the context of competitive, arms'-length negotiations. As the evidence demonstrated in the merits phase of this proceeding, during late 1998 and early 1999 Central European Media Enterprises, Ltd., the Claimant's parent company ("CME" or "CME Ltd"), was negotiating a potential merger with SBS Broadcasting, S.A. ("SBS"), culminating in a contract executed in late March 1999. That contract never led to a closing, because SBS elected to terminate the contract and pay a termination penalty rather than complete the transaction after the Media Council's violations of Claimant's rights culminated in CET 21's severance of all business dealings with ČNTS on August 5, 1999. Although the negotiations and the contract with SBS related to a purchase of all of CME, SBS undertook an extensive, detailed and rigorous assessment of the value of ČNTS as the most important component by far of the CME package. SBS also reassessed that value as CME's ability to deliver ČNTS as the economic centrepiece and exclusive operator of TV Nova became progressively less certain. The declarations of Michael Finkelstein, Chief Executive Officer of SBS, and David Stogel, SBS's Vice-President for Development, establish that the value this willing arms'-length buyer attached to ČNTS, if ČNTS could be assured of a legally protected exclusive economic position respecting TV Nova, was approximately USD600 million.

(b) The Value Attached to ČNTS in Arms'-Length Negotiations with Dr. Zelezný

101. A second indication of the fair market value of ČNTS can be derived from the price CME paid in August 1997 to purchase Nova Consulting (of which Dr. Zelezný owned 100%), whose sole asset was a 5.8% interest in ČNTS. This price of USD 28,537,500 was based on an understanding that CME would pay Dr. Zelezný an amount corresponding with 5.8% of the aggregate value of ČNTS, and that other buyers were willing to pay at least that much if CME declined to do so. The parties concluded, at arms' length, that this aggregate value was about USD 500 million, corresponding almost exactly with a valuation multiple of ten times ČNTS' 1997 earnings before interest, taxes, depreciation and amortization (commonly known as "EBITDA"). Attachment of this multiple to CME' 1998 EBITDA yields a valuation of USD 542 million.

(c) Expert Valuation of ČNTS Based on Financial Analysis

102. Dr. Thomas Copeland (Monitor Group), one of the world's leading authorities on company valuation, determined ČNTS' value as of August 5, 1999 by the standard methods commonly used by buyers and sellers when valuing a company like ČNTS for a prospective purchase or sale. These methods of valuation are (*i*) a discounted cash flow ("DCF") analysis, in which Dr. Copeland develops future cash flow projections for ČNTS as of 1999 and discounts the future expected cash flow stream to present value by applying a weighted average cost of capital taking appropriate account of the risk associated with achieving that cash flow, and (*ii*) a trading multiple analysis, in which

Dr. Copeland determined (based on reviews of the value of comparable companies as determined by market trading in their stock) a factor or "multiple" that, when multiplied by a measure of financial performance such as EBITDA, yields a valuation of ČNTS.

103. Dr. Copeland's DCF analysis, the most widely employed approach to the valuation of a going concern, depends for its accuracy — as most other valuation methods do not — on projections of the company's future performance. As the starting point for this analysis, Dr. Copeland reviews the reliability of the forecasts of ČNTS' future performance generated by ČNTS and CME in February 1999. The declaration of John Schwallie, former Chief Financial Officer of CME and former Finance Director of ČNTS, explains the bases for these forecasts (which were prepared under his supervision) and the reasons why he believed they were well-founded (as subsequent events have shown them to be). In addition, the declaration of Fred Klinkhammer, CME' President and Chief Executive Officer, describes important characteristics of ČNTS and the Czech television marketplace that are relevant to the validation of the ČNTS forecasts and the valuation conclusions drawn from them.

104. Dr. Copeland concludes that the "enterprise value" of ČNTS as of August 5, 1999 was USD 556 million, to which he adds a "control premium" of the kind that willing buyers typically pay to acquire companies, which he calculates to be USD 100 million.

(d) Valuation of ČNTS in Professional Independent Analysts' Reports

105. The fourth approach to valuing ČNTS is based on the contemporaneous reports of eight stock and bond market analysts who presented valuations of ČNTS on a stand-alone basis in the course of following CME from 1997 through 1999. As described in Mr. Schwallie's declaration, these assessments reflect professional estimates of ČNTS' value by disinterested analysts whose job was to assess value for the guidance of clients' investment strategies. Their analyses reflect confidence in ČNTS' future prospects, with the most thorough reports consistently arriving at higher valuations of the company. These analysts' assessments are consistent with the other indicia of ČNTS' value. Although the lowest and highest of all analysts' estimates of ČNTS' value are substantially different from each other, the overwhelming majority of the reports provide estimates within a much narrower band. Six of the eight analysts presented average valuations between USD 504 and USD 691 million, and the average of these valuations was USD 578 million.

106. These independent approaches support a valuation of ČNTS for the purpose of the Tribunal's award at USD 560 million. The USD 560 million number is very close to Dr. Copeland's opinion that ČNTS' August 5, 1999 enterprise value was USD 556 million, and is supported as well by the other indications of value that cluster tightly around USD 560 million. This figure reflects a conservative approach to valuation.

107. The residual value of Claimant's interest in ČNTS after CET 21's severance, net of the costs for ČNTS and net of the amount required to wind up ČNTS' affairs, amounts to about USD 27.5 million.

108. Under settled law, and in order to provide the Claimant with full compensation, the Claimant is also entitled to recover interest on the award, running from August 5, 1999, the date when it experienced the loss, to the date when the Respondent makes full and complete satisfaction of the Tribunal's quantum award. The Claimant submits that the proper measure of interest on the award is the Czech statutory rate of 12.0% p.a..

II. Claimant's Statement of Facts supporting the Claim

(1) TV Nova's Dominance in the Czech Market

109. Shortly after TV Nova first began to broadcast its signal in early 1994, it became a phenomenal success. With the technical capacity to reach virtually every Czech television receiver in the country and an immediately popular combination of independent news, local programming and western productions that shattered the monotony of the state-run television, TV Nova soared to an astonishing 70% audience share a year after its first broadcast (1999 Zenith Media report: Television to Europe to 2008, noting that TV Nova achieved a 70% audience share in 1995). TV Nova quickly established itself as one of the world's greatest broadcasting success stories. (February 4, 1999 Donaldson, Lufkin & Jenrette ("DLJ") report).

110. In short order, TV Nova also became the market leader for the placement of nationwide advertisements in the Czech Republic. This accomplishment was the recipe for TV Nova's enormous profitability. Advertising revenues constituted approximately 90% of TV Nova's total revenues, and TV Nova took 70% of all TV advertising revenues in the country. TV Nova's financial success was directly related to its success in placing advertising, and its success in placing advertising reflected not only the quality of its programming but also the unique characteristics of the Czech television market.

111. Before TV Nova began operations in the Czech Republic in 1994, advertisers who sought to reach a national Czech audience had only three alternatives: the numerous newspapers with exclusively local or uneven regional circulation; one or more of several radio stations with limited reach, audiences and advertising power; or one of the two state-run nationwide television stations individually known as CT1 and CT2 (collectively "Czech TV"), which were subject to strict programming and advertising requirements.

112. Unsatisfied with these existing choices, advertisers (both domestic companies and international corporations breaking into the Czech market) flocked to TV Nova, which ensured enthusiastic viewers as well as a virtually national audience. (February 18, 1999 Morgan Stanley Dean Witter ("MSDW") report). TV advertising became the adver-

tising medium of choice for nationwide reach. Quickly and successfully capitalizing on this opportunity, ČNTS became profitable on an operating basis not in the originally projected three years that would have constituted a rapid pace for a TV enterprise, but in just three months. Revenues increased by 1996 to more than USD 100 million per year with a profit of roughly USD 30 million per year (or USD 51 million pre-tax profit).

113. TV Nova's dominance of audience share was achieved by eclipsing Czech TV. Although CT1 and CT2 controlled broadcast signals that (like TV Nova's signal) had the technical ability to reach nearly every Czech home (ARBO Media Television Market report January-June 2001), Czech TV was required by law to show a range of "public interest" programming and operated under a self-imposed ceiling of 38% for foreign-acquired content. (Art. 9 Media Law as of 1999; 1999 Kagan Media report at para. 204). The programming aired on Czech TV was consequently far less popular than TV Nova, which purchased the rights to major sporting events and high quality foreign programming and developed local formats that viewers wanted to watch. While TV Nova's audience share ran consistently in the range of 55-65% or even higher before CET 21 severed relations with ČNTS on August 5, 1999, the combined audience share of CT1 and CT2 captured an incomplete portion of the remainder (at 4 ARBO report – "Evolution of Audience Share"; at 29-30 2001 Zenith Report).

114. While TV Nova enjoyed enormous television audience share, its share of the television advertising market has been even more pronounced (at 20 1999 Zenith report; at para. 205 1999 Kagan report). Strict limitations on advertising that hampered Czech TV did not apply to TV Nova. Czech TV was initially restricted to allocating a maximum of 3% of daily airtime to commercials, and, effective at the start of 1996, that figure was reduced to 1% (Art. 7(1) 1991 Media Law; Art. I(7) 1996 Media Law amendment). TV Nova's maximum commercial time was set at 10% (increasing to 15% with the 2001 revision of the Media Law). Starting in early 1995, TV Nova was permitted to interrupt programs for commercials (an approach that was more attractive for advertisers because it kept commercial viewership higher and facilitated matching with the format of foreign programming designed with commercial breaks), while Czech TV remained subject to an almost complete prohibition on such interruptions. These programming and advertising constraints continue today and as a consequence the public television stations have taken a "much lower" share of advertising expenditure than they do viewing (at 21 1999 Zenith report).

115. TV Nova's huge audience share, combined with these advertising restrictions on the public stations, have made TV Nova the preeminent vehicle for the placement of nationwide advertising in the Czech Republic. These factors created a situation where by 1999, a typical prime-time peak slot on TV Nova was seen by an estimated one in every four adults in the Czech Republic (at 20 1999 Zenith report), and TV Nova could sell ten times the number of advertising slots compared to the public stations.

(2) Barriers to Competition for Market Share Against TV Nova

116. TV Nova was able to gain its dominant position, and was expected in 1999 to maintain that dominance going forward, because of the unusually high barriers to entry of alternative competitors for nationwide advertising time. (at 15 February 4, 1999 DLJ report). Under a set of international treaties allocating the broadcast spectrum between the Czech Republic and adjoining countries to prevent interference with each other's signals, the Czech portion of the broadcast spectrum has capacity for only four television stations having national or nearly national coverage. The four current slots are occupied by the two state-run Czech TV stations and two private commercial stations, TV Nova and TV Prima. Under Czech legislation, these two private stations are entitled to an automatic renewal of their current licenses, at the expiration of those licenses, for another twelve years. (Art. 12.8 2001 Media Law).

117. The other private TV station, TV Prima, has never been a strong competitor of TV Nova. Initially founded in 1993 as a local station, it has always had a much smaller audience share than TV Nova and has been far less able to afford quality programming sufficient to make it a viable competitor (at 21 1999 Zenith report). Prima has transformed itself from a local station to one falling just short of national coverage by putting together a collection of local and regional stations into a single entity. That effort raised its technical penetration (that is, the percentage of Czech homes that can receive its signal) to about 70% in 1998, and up to 88% in 2001 (at 21 1999 and at 30 2001 Zenith reports), but at a cost that has kept the company under a heavy debt burden. For most of the station's existence, including during 1999, it has struggled financially and has not been able to acquire high quality programming. Prima's audience share increased slightly in response to the significant fall-off in TV Nova's share immediately following CET 21's severance of relations with ČNTS on August 5, 1999, and thereafter, but that increase in audience share has only placed TV Prima in the range of 17% or 18% — still far behind Nova. (at 4 ARBO report – "Evolution of Audience Share"). This increase in viewership has not altered TV Nova's dominance of the advertising market, and TV Prima's lack of full national reach has limited its ability to attract advertising.

118. The nature of the Czech television market creates enormous structural barriers to competition from other regional and foreign broadcasters. One regional company, known as Galaxie until it failed financially and now known as TV3 (and facing the threat of failure again), has tried to compete, but its limited total penetration as a non-national station has made it unable to generate the necessary funds to purchase high quality programming or for the expensive process of acquiring and operating a group of strung-together broadcasting facilities (at 21 1999 Zenith report noting 26% penetration for Galaxie as of year-end 1998). Its audience share has never exceeded about 1% (at 4 ARBO report).

119. While a few broadcast stations in neighboring countries have transmitted their signals into the Czech Republic, they, too, have had no significant effect. Czech viewership of

programming in a different language has been and is expected to remain small (at 23 1999 Zenith report indicating that the total audience share for all broadcasters other than TV Nova, Prima and Czech TV ranged between 2% and 3.9% from 1995-98). Regional broadcasters also have not made any substantial inroads into TV Nova's position, because any entity that lacks sufficient nationwide penetration to reach a substantial majority of the limited number of possible homes will be unable to generate the advertising revenues necessary to purchase competitive programming and otherwise to operate itself profitably. Thus, although the signals of some foreign stations are accessible in the Czech Republic, their market share has been and is expected to remain very small.

120. Penetration by cable companies and by satellite has similarly remained modest, and of a scale that has no material effect on TV Nova's share of the Czech advertising market. Cable penetration grew from 6% of households in 1993 to an estimated 19% in 1998 (at 24 1999 Zenith report). This level was, and has remained, far behind the level of cable penetration in other European countries. The expense of installing cable infrastructure, the popularity of TV Nova as an existing nationwide station (and the most watched program on cable), and the difficulty of competing effectively with new programming have combined to make cable ventures limited and unprofitable. Additional high quality programming for broadcast on cable would be difficult to acquire, since TV Nova already has long-term deals with the major U.S. sources of programming. Dubbing foreign programming into Czech also adds substantial costs, and local production in the Czech Republic is expensive. In a country with a population of only 10 million people in 3.5 million homes and its own language (the only language in which programming is likely to achieve substantial viewership), the expenditure necessary for a new entrant to obtain even a small share of the limited Czech market has generally been substantially greater than the expected return from that expenditure.

121. After CET 21 severed its relationship with ČNTS in 1999, ČNTS carefully considered offering a cable service in the Czech Republic. Although ČNTS had a substantial advantage over other potential entrants, in that it already had operating production facilities, a trained staff and a substantial library of program materials in the Czech language, it was unable to develop a business model for cable or satellite transmission in the Czech Republic that would be financially viable, much less competitive. Other potential entrants would face far greater impediments to competing with TV Nova to a degree that would harm its financial position.

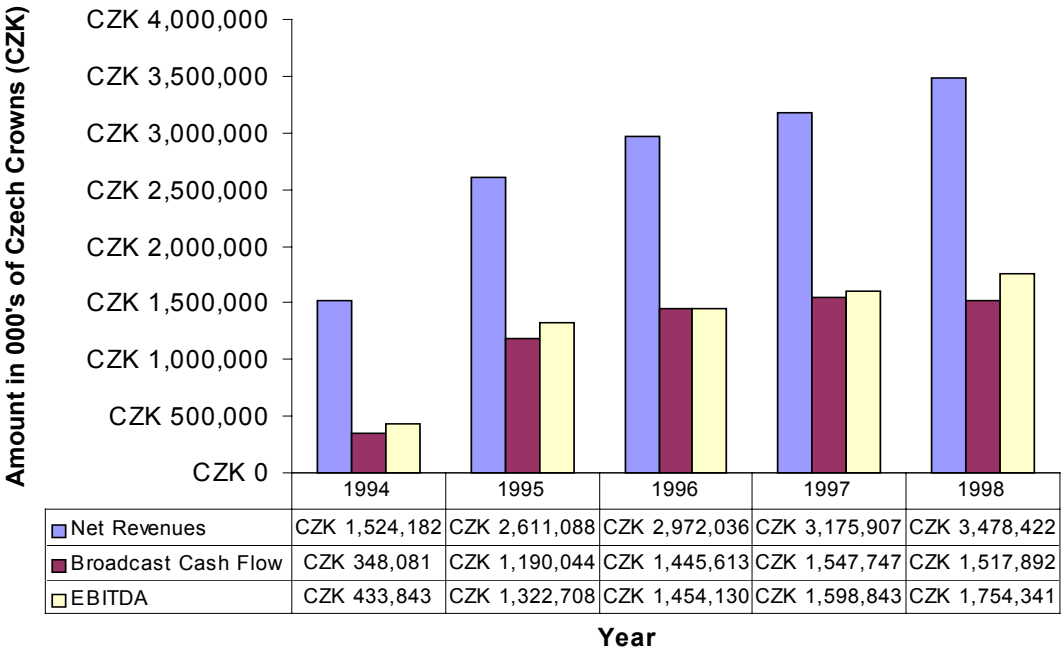
122. These characteristics of the Czech television and advertising markets were, and in 1999 were expected to remain, a substantial part of the reason for TV Nova's enormous success. Although CME conservatively assumed for the purposes of its forecasts in early 1999 that TV Nova's dominant share of the total television advertising market in the Czech Republic would diminish somewhat over time, there was no structural or competitive reason for this change to take place; apart from the reduction in viewership

caused by the severance of the relationship between CET 21 and ČNTS, for which CME certainly did not plan before 1999 (at 29 2001 Zenith report).

(3) ČNTS's historical performance

123. The financial statements of ČNTS for each of the years of its operation of TV Nova, running from 1994 through the first half of 1999, were reviewed and approved by the independent accounting firm Arthur Andersen as part of its annual independent audits of CME for purposes of CME's United States public filings of consolidated financial statements. Arthur Andersen found that these statements fairly presented ČNTS's financial position in accordance with United States generally accepted accounting principles ("GAAP"). The corresponding ČNTS financial statements prepared for local Czech statutory audits during this period, presented in Czech crowns, were also reviewed and approved by Arthur Andersen.

124. The following table summarizes ČNTS's revenues, broadcast cash flow ("BCF") and EBITDA for each of the full years of ČNTS's operation, 1994-98, in Czech crowns:



	1994	1995	1996	1997	1998
Net Revenues	CZK 1,524,182	CZK 2,611,088	CZK 2,972,036	CZK 3,175,907	CZK 3,478,422
Broadcast Cash Flow	CZK 348,081	CZK 1,190,044	CZK 1,445,613	CZK 1,547,747	CZK 1,517,892
EBITDA	CZK 433,843	CZK 1,322,708	CZK 1,454,130	CZK 1,598,843	CZK 1,754,341

125. As this chart shows, ČNTS was a company that, as of 1999, had experienced remarkable growth, stability and success. Even the most significant adverse financial event of the second half of the 1990s — the late summer 1998 Russian debt crisis, which precipitated a near collapse of the ruble, a worldwide drop in stock indexes and a huge reduction in investor confidence in the financial prospects of companies in Russia and nearby Central European countries — touched Nova's growth only very slightly and temporarily. Market analysts and financial advisors to CME correctly expected Nova to shake off any slowdown in its growth as a result of the Russian debt crisis over a rela-

tively short period. (at 1-2 February 18, 1999 MSDW report). ČNTS faced no major financial vulnerabilities, apart from the threat to its continued legal entitlement to exploit the economics of the CET 21 license on an exclusive basis, during this period. It funded its own operations and generated substantial and reliable earnings for CME, which reinvested those earnings in part to increase its interest in ČNTS from 66% to the 99% it has held since August 1997.

(4) CME'S Forecasts for ČNTS

126. In late 1998 and early 1999, CME pursued in earnest a merger with SBS. CME's internal Finance Department created a set of long-term projections of future performance for CME and for each separate television company in which CME held an interest. CME's forecasts for ČNTS was prepared by and under the supervision of John Schwallie as Chief Financial Officer of CME in February 1999 (the "1999 Forecasts"). These projections were reviewed and their substance endorsed (after substantial due diligence) by SBS as an intended acquirer of CME. CME re-issued these forecasts without alteration in March 1999.

127. These forecasts were intended to represent a responsible estimate of ČNTS' future performance for which CME faced the prospect of being held accountable by SBS. CME and its internal financial staff felt substantial incentive to project as responsibly and accurately as possible in these circumstances, not least because the projections were being prepared for their expected future employers, who would be likely to evaluate their new Finance Department employees based largely on ČNTS' achievement of the projected outcomes. Reflecting CME's goals of both accuracy and avoidance of overstating projected results, so that the forecasts would be achieved, several components of CME's projections were purposely conservative.

128. As the assumptions page of CME's 1999 Forecasts makes clear, the primary drivers of the projections, and of ČNTS' profitability generally, were the overall size of the Czech television advertising market and ČNTS' share of that market. ČNTS' financial personnel developed their projections of its future gross advertising revenues and net advertising revenues (after the discounting from the stated price on rate cards that is customary in the Czech Republic) primarily through talking to the major advertising agencies about their plans and expectations, visiting the largest sponsors of advertising and potential future major sponsors, and talking regularly and intensively with ČNTS' marketing personnel. CME and ČNTS tested the advertising projections against projections derived from a financial review of historic growth rates, current market and macroeconomic forces and trends, and assessments by market research and consulting and marketing organizations (like Zenith Media, Kagan Media and ARBO Media) that made a business of generating projections for the Czech marketplace.

129. These sources indicated that the Czech advertising market generally, and television advertising in particular, would continue to grow in the long term and even during the short term period (February 18, 1999 MSDW report at 4, February 4, 1999 DLJ report).

The Czech Republic had followed the general commercial experience of emerging economies that as gross domestic product ("GDP") increases over time, advertising spending as a percentage of GDP tends also to increase, and that as advertising spending increases, television advertising spending as a percentage of advertising spending tends to increase even further. This general multiplicative effect had led to substantial growth, and it offered TV Nova substantial prospects for continued growth.

130. That growth rate was expected to be somewhat lower over 1999 than the rates in the prior two years, but it was equally expected that strong growth in the television advertising market would resume after 1999, once the impact of the Russian crisis had fully abated. It was estimated that television advertising expenditure as a percentage of all ad spending would grow from 50% to 54% in the Czech Republic between 1999 and 2001, in an environment where total spending was also expected to rise (at 24 1999 Zenith report). Annual advertising spending in the Czech Republic in 1997 was USD 22 per capita, well below that of other European countries like the Netherlands (USD 38), Sweden (USD 41), Belgium (USD 54), Denmark (USD 53), Italy (USD 59), the U.K. (USD 73) and Norway (USD 99).

(5) Actual Development

131. Settled law makes clear that the Tribunal's valuation of the Claimant's investment in ČNTS based on the company's market value should be accomplished by reference to conditions at the time of the loss, since a willing buyer would not have known what future events would bring in negotiating a purchase with a willing seller at that time. *See Phillips Petroleum Co. Iran v. Iran*, Award No. 425-39-2 (1989), *reprinted in* 21 Iran-U.S. Cl. Trib. Rep. 79, 128. Nevertheless, comparison of CME's projections against actual results for the period since the forecasts were prepared reinforces the reasonableness of using those forecasts in valuing ČNTS. The following table compares CME's projection of TV Nova's television advertising revenues (denominated "net spot revenues" on page two of the 1999 forecasts with actual advertising revenues.

TV Nova net ad revenues in billions of Czech crowns	1999	2000
CME Projection	3.4	3.8
Actual Results	3.5	3.9

132. As this comparison makes clear, CME's forecasts under-predicted the revenues from advertising that are the central driver of TV Nova's profitability. If not for the reduction of audience share that followed in immediate reaction to the CET 21 severance of dealings with ČNTS, and that has continued thereafter — a development CME did not project — these forecasts could have been expected to understate the reality even further (at 4 ARBO report). The chairman of CET 21's primary current service company,

Czech Production 2000, has recently estimated that TV Nova's advertising revenues will grow further this year. (November 26, 2001 Tyden interview).

133. Although the figures for TV Nova's net income after the split from ČNTS are not available, the profits previously received exclusively within ČNTS being now distributed among several service companies, as well as CET 21, it is reasonable to conclude that TV Nova's 1999 and 2000 advertising revenues that exceeded CME's 1999 projections led to even higher net income than CME had projected. As reported by the Czech Republic's Ministry of Finance, actual inflation rates in those years (an important cost component) were only 2.1% and 3.9% respectively, (at 7 2001 Czech Republic Macroeconomic Forecast), far below the 8% figure CME had employed in the projections (at 1 1999 Forecasts). Moreover, TV Nova had substantial room to maintain continued high profitability by exerting more discipline on programming commitments and other expenditures that were projected very conservatively in the 1999 Forecasts.

134. The 1999 Forecasts presented a reasonable prediction of future results. Responsible estimation, incorporation of margins to account for error and the monetary incentive to predict accurately make the 1999 Forecasts a solid and appropriate foundation from which to determine ČNTS's 1999 market value.

(6) The particular value of ČNTS to CME

135. Stand-alone valuation of ČNTS does not fully capture its particular value to CME, as CME's only source of cash from operations, and as a pivotal strategic asset for Central Europe.

136. At the time of the Czech Republic's breaches of the Treaty and Claimant's loss of TV Nova, ČNTS' substantial profitability stood in marked contrast to the results of CME's development efforts in Ukraine, Slovakia, Slovenia, Romania, Poland and Hungary. Only one other CME station had yielded any positive EBITDA or positive cash flows as of the end of 1998. No other station had generated positive net income. Operational difficulties in Poland had led to unrecoverable losses of more than USD 80 million leading to 1998 losses and charges against income of USD 45 million, and withdrawal from that market in December 1998. A CME-sponsored station in Hungary had led to USD 31 million of operating losses and write-offs in 1998, an anticipation of USD 8 million more in write-offs in 1999 and an anticipated total loss of USD 65 million. Ukraine's economy had been hit hard by the Russian debt and currency crisis, and the company's television development effort in Germany had not succeeded.

137. All of these stations were following the conventional pattern of television stations (never experienced at ČNTS), of sustaining several years' losses before they could achieve a profit. Although CME expected that each of these stations would become profitable with time — and each is EBITDA positive today — their prospects depended on CME's ability to tolerate and fund their unprofitable and sometimes expensive development periods. CME had consequently borrowed approximately USD 170 million,

through bonds it issued to public bondholders, to finance these stations' development, placing itself under substantial debt burdens in 1999. The proceeds of these bond offerings had been used primarily to fund CME's stations whose operations were not yet profitable. ČNTS had not placed any demands on these loans. ČNTS' substantial profits and dividends in the years before 1999 had been reinvested in TV Nova, through capital expenditures and in the purchases of interests in ČNTS by which CME's 66% interest was increased to 99%. Future expected profits from ČNTS were viewed as a critical source of funding for service of CME's debt load, weathering start-up losses in other countries and continuing the company's expansion.

138. ČNTS freed CME from subservience to its debt obligations and prevented those obligations from intruding on CME's ability to effectuate its business plans. ČNTS' profits prevented the risk of default on the bonds, and gave business partners strong reason to collaborate on station development rather than to try to break away from CME.

139. All of these critical values were lost when Claimant's investment in ČNTS was destroyed in August 1999. This was compounded by the great reduction in investor confidence in CME's ability to sustain its operations elsewhere in the face of the destruction of its dominant investment. In these respects, valuing ČNTS on a stand alone basis significantly understates the loss CME suffered from the destruction of its business in 1999.

(7) CME'S Investment should be valued by reference to what a Willing Buyer SBS, thought it was worth

140. One of the best possible indicators of an enterprise's fair market value is what an actual willing buyer thinks it is worth. (Brower & Brueschke, *The Iran-United States Claims Tribunal* 589 (1998), ("in valuing going concerns, . . . where an active market exists for the expropriated entity the actual market value must be granted"); A marketplace-generated valuation of a destroyed investment should carry powerful probative force, *INA Corp. v. Iran*, Award No. 184-161-1 (1985), *reprinted in* 8 Iran-U.S. Cl. Trib. Rep. 373, 382-83, (awarding claimant what it had paid for the shares of the expropriated entity in an arms'-length transaction approximately one year before the taking, on the basis that nothing had occurred in the intervening months to lessen the value of its investment, and remarking that claimant's request for this award was "not only reasonable, but in fact conservative" because the entity's value "had, if anything, increased in the year following [claimant's] investment"); *Saghi v. Iran*, Award No. 544-298-2 (1993), *reprinted in* 29 Iran-U.S. Cl. Trib. Rep. 20, 49, (accepting actual purchase and sale prices, pre-dating expropriation by five years, with appropriate adjustments, as "potentially important evidence" of the asset's market value, and weighing that evidence more heavily than *post hoc* valuations).

(8) SBS's Valuation of ČNTS

141. SBS intensified its interest in acquiring CME in the latter part of 1998. The value of ČNTS was a major reason for SBS's interest in CME. As the core source of CME's profitability, the most successful private television enterprise in the former Soviet bloc region, the only current cash-generator in the CME station group and an operation with enormous continuing promise, ČNTS represented the largest component by far of CME's value. Its ability to generate cash that could be used to fund station development and expansion throughout the company was another major attraction.

142. SBS undertook substantial efforts to assess ČNTS' value. The efforts included a rigorous review of ČNTS' historical results, the study and due diligence assessment of CME-generated projections of ČNTS' future performance, generation of SBS's own "sensitized" internal projections for ČNTS, and substantial efforts to understand the emerging threat to ČNTS' exclusive entitlement to use, exploit and benefit from the license for TV Nova.

143. The correct SBS valuation of ČNTS for the purpose of this proceeding is its valuation of ČNTS freed from uncertainty over ČNTS' future entitlement to such exclusivity, since valuations for purposes of compensation after a taking should be made without reference to diminutions in value associated with the previously sown seeds of the ultimate taking (here, the 1996 forced amendment of the ČNTS MOA) or with the threat of the taking. (*Amoco Int'l Finance Corp. v. Iran*, Award No. 310-56-3 (1987), *reprinted in* 15 Iran-U.S. Cl. Trib. Rep. 189, 265, "the effects of the prospects of expropriation on the market price of the expropriated assets must be eliminated for the purpose of evaluating the compensation to be paid, since they are artificial and unrelated to the real value of such assets"); *INA Corp v. Iran*, *supra*, at 380; *Sedco Inc. v. NIOC,* Award No. 309-129-3 (1987), *reprinted in* 15 Iran-U.S. Cl. Trib. Rep. 23, 45).

144. The valuations SBS performed in early 1999 point to a value of ČNTS in the range of USD 600 million. That is the number that SBS's Executive Committee members frequently mentioned internally as their view of ČNTS' value if the issue of its right to exclusivity could be resolved, although they invariably attached an estimated "peace premium" to achieving that value. It is also the number that the SBS executives who put together the financial analysis of the proposed transaction attached to a standalone ČNTS, without the threat to its ability to continue its business as before.

145. On February 19, 1999, Mr. Knight (Chief Operating Officer) and David Stogel (Vice President in the company's business development department) presented to the SBS Board a valuation report. This report was developed to support SBS's proposal to acquire CME for the price of .725 shares of SBS stock for every share of CME stock, while also taking responsibility for CME's adjusted net debt of approximately USD 133 million. The report included a set of projections of future ČNTS performance drawn from SBS's evaluation of CME's 1999 forecasts, presenting results that were quite close to those that CME had presented to SBS as part of the merger negotiations.

146. On February 22, 1999, Messrs. Knight and Stogel also generated a ČNTS-specific valuation analysis, for the purpose of addressing the effect of the dispute in the Czech Republic. The Knight and Stogel analysis of ČNTS arrived at a pre-adjustment enterprise value for ČNTS of USD 476.52 million, which they obtained by attaching a multiple of 9.1*x* to ČNTS' projected 2001 station operating cash flows ("STOCF"), a measure closely similar to EBITDA, of USD 52.365 million. It also was subject to several adjustments.

147. *First*, in presenting ČNTS' STOCF for this valuation, Messrs. Knight and Stogel did not include annual management fees payable from ČNTS to CME (and which would be paid to SBS after a merger), projected to be USD 4.034 million in 2000. Because these fees would be directly attributed to ČNTS if it were valued on a standalone basis, this cash flow needed to be added to projected STOCF to value ČNTS alone.

148. *Second*, the valuation erroneously attached a 9.1*x* multiple to ČNTS' projected 2001 STOCF, when the multiple should have been attached to ČNTS' projected 2000 STOCF, which was USD 3.721 million lower. The 9.1*x* multiple was described in the analysis as reflecting a 20% discount from SBS's internal projected 2001 STOCF multiple (11.4*x*), but that was actually SBS's internal projected cash flow multiple for 2000.

149. *Third*, the 20% discount from SBS's own implied multiple that Messrs. Knight and Stogel used in applying the 9.1*x* multiple was only attached to ČNTS because of SBS's uncertainty about ČNTS' continued entitlement to all revenues from TV Nova and CME's expected need to pay a "peace premium" to Dr. Zelezný to resolve the challenge to ČNTS' entitlement to the earnings of TV Nova, which would reduce the value of what SBS was acquiring. At that point, SBS was assuming that the "peace premium" would include giving Dr. Železný and other CET 21 shareholders an additional 18% interest in ČNTS, in connection with a merger of ČNTS and CET 21, and giving Dr. Zelezný a USD 27 million cash payment, nominally characterized as an annuity to be paid upon renewal of the TV Nova license. As Mr. Stogel explains in his declaration, absent the uncertainty over ČNTS' position and the assumed cost of resolving the challenge to ČNTS' position, the applicable multiple would have been at least equal to SBS's internal 2000 STOCF multiple, because only a multiple of that level would fully reflect ČNTS' profitability (far above that of any SBS property), powerful market position, maturation, earning capacity and value as a cash generator. Application of that 11.4*x* multiple to ČNTS' projected 2000 STOCF (including management fees) yields a valuation for ČNTS of USD 600.529.000.

(9) Synergies of the SBS/CMS merger

150. SBS's valuations of ČNTS on a standalone basis significantly understated its actual value to SBS and the value that CME reasonably expected to receive from the proposed merger, given the substantial synergies to be realized in the form of added revenues and opportunities for cost-avoidance in the merged company. CME and SBS independently (and without sharing their full analyses with each other at the time)

reached remarkably consistent views about the expected nature and scope of these synergies. The two principal components were (*i*) synergies flowing from aggregation of the program purchasing power of the two companies, which would allow the combined entity to buy premium programming at lower prices, and (*ii*) the savings to be realized from combining broadcast activities in the two countries (Hungary and Slovenia) where both companies had television operations. The parties projected that TV Nova's buying power alone would account for at least half of the anticipated synergies, which SBS forecasted to total some USD 42 million in increased annual profits by 2002 (compared with CME's forecasts of more than USD 40 million in 2002). Application of the average "expected case" value of USD 58.86 per share by year-end 2000 that SBS's analysis projected to the interest that CME's former shareholders would hold in the combined company including these synergies, based on SBS's February 1999 offer of .725 of its shares for each of CME's 28.686 million fully diluted shares, indicates the midpoint of SBS's internal projections of expected value associated with CME shares merged into SBS was USD 1.224 billion by the end of 2000.

(10) The Frustration of SBS's Acquisition Effort

151. SBS's February 1999 acquisition offer at a .725 share exchange ratio would unquestionably have been higher if not for the expectation built into that offer that the CME entity to be acquired would include only 81% of ČNTS and would have its assets further reduced by the payment of a cash "peace premium" to Dr. Zelezný, and if not for the substantial issue of whether ČNTS was assured of a continuing exclusive entitlement to exploit the economies associated with operating TV Nova that stimulated consideration of this payment. Reflecting that concern, SBS's offer recited as a condition precedent that CME and Dr. Zelezný would have to execute a binding agreement resolving all issues about ČNTS' exclusive positions. CME and SBS hoped these issues could be solved with the proposed conveyances to Dr. Zelezný and his partners and agreement to merge ČNTS and CET 21.

152. During the period following the February SBS Board presentation, adverse developments in the Czech Republic further drove down the transaction price for the merger. Senior members of SBS's management became personally involved in CME's negotiations with Dr. Zelezný and met with the Media Council, but were unable to achieve a breakthrough. SBS also learned of the March 15, 1999 letter from the Czech Media Council supporting Dr. Zelezný's contention that the exclusivity enjoyed by ČNTS was contrary to Czech law. The events surrounding this letter made clear to SBS that any financial resolution with Dr. Zelezný was significantly less likely, and would have to be at a much higher price than originally thought.

153. By the time CME and SBS executed the agreement by which SBS was to acquire CME on March 29, 1999, concern over CME's ability to deliver an intact ČNTS and over the possible cost of doing so, prompted a further reduction in the transaction price — to .5

shares of SBS stock for every share of CME stock. This slippage was almost entirely attributable to the deteriorating situation in the Czech Republic.

154. The merger contract reflected SBS's unwillingness to proceed with the transaction without TV Nova. While the contract recited that further adverse developments in the Czech Republic would not justify termination, it also expressly permitted SBS, upon payment of a fee, to terminate the agreement if its Board rejected it.

155. After CET 21 severed all dealings with ČNTS on August 5, 1999, there was no longer any prospect that SBS would carry out the acquisition of CME. On September 28, 1999, SBS formally announced that it would not consummate the transaction and terminated the merger agreement. In SBS's press release of the same day SBS stated that it paid a negotiated USD 8.25 million termination fee rather than proceed with the transaction.

(11) Value of CNTS under the Nova Consulting Transaction in August 1997

156. The price agreed upon between CME and Dr. Zelezný when CME purchased Dr. Zelezný's 100% interest in Nova Consulting, which owned a 5.8% share in ČNTS, is another indication of ČNTS' value. Under a Share Purchase Agreement executed on August 11, 1997, CME agreed to purchase this interest for a base purchase price of USD 28,537,500.

157. CME's decision whether to pay the proposed purchase price took into account Dr. Zelezný's apparent ability to sell the 5.8% interest in ČNTS to a third party for a price "at or above this value." The agreed upon base purchase price for 5.8% of ČNTS corresponds with an August 1997 valuation of 100% of ČNTS at USD492 million. This valuation could only have grown in 1998, as the company's revenues and profits increased. The valuation for ČNTS implied by the Share Purchase Agreement's base price provisions was equal to almost exactly ten times ČNTS' 1997 EBITDA. Applying this multiplier to ČNTS' 1998 EBITDA yields a fair market value figure of about USD 542 million.

(12) Value of CNTS confirmed by Expert Analysis

(a) Dr. Copeland's and Monitor Group's Analysis

158. Monitor's report relies on several methods to determine the value of ČNTS as of August 5, 1999. These methods — discounted cash flow (DCF), trading multiple, and analyst valuation — comprise the most common means by which buyers and sellers come to conclusions about company value.

(b) DCF valuation method

159. Dr. Copeland's primary approach to valuing ČNTS is the DCF methodology, which yields an "enterprise value" for the company as of August 5, 1999 of USD 556 million. The DCF method derives the value of a company based on its long-term ability to gen-

erate cash and is the most informative and consistently reliable method of valuing companies.

160. Three factors establish a DCF valuation: (*i*) the company's projected future operating cash flows (that is, cash receipts minus cash payments, such as debt service), estimated for each year over a finite forecast period; (*ii*) the "continuing value" of the company based on expected cash flows growing at a constant rate after the forecast period; and (*iii*) a discount rate, applied to each of the projected future cash flows, which determines the present value of those future cash flows. The discount rate is based on a company's weighted average cost of capital.

161. International arbitral tribunals have recognized the DCF method's utility in the context of compensation for the destruction or taking of going concerns where no active market for the asset exists. The Iran-U.S. Claims Tribunal and ICSID tribunals have utilized the DCF method for calculating the quantum of damages in cases of expropriation. In *Amco Asia Corp. v. Republic of Indonesia*, an ICSID tribunal explained that it had used the DCF method because "while there are several methods of valuation of going concerns, the most appropriate one is to establish the *net present value* of the business, based on a projection of the foreseeable net cash flow during the period to be considered." *Amco Asia Corp. v. Republic of Indonesia*, ICSID Case No. ARB/81/1 (1984), 1 ICSID Rep. 413, 501 (1993), (*Amco Asia I*). The Iran-U.S. Claims Tribunal also calculated compensation using the DCF method. *Starrett Housing*, *supra*, and *Phillips Petroleum*, *supra*. As the Tribunal explained in *Phillips Petroleum*, "a prospective buyer of the asset would almost certainly undertake [a] DCF analysis to help it determine the price it would be willing to pay and DCF calculations are, therefore, evidence the Tribunal is justified in considering in reaching its decision on value." *Phillips Petroleum*, *supra*, at 123, *Amoco Int'l Finance Corp.*, *supra*, at 258, (DCF method properly employed when *restitutio in integrum* equivalent contemplated by the *Factory at Chorzów* case is the appropriate standard of compensation); Brower & Brueschke, *supra*, at 589, ("Where an active market does not exist, the DCF method has proved a valuable tool to approximate fair market value."); *World Bank Guidelines on the Treatment of Foreign Direct Investment,* adopted September 21, 1992, *reprinted in* 31 I.L.M. 1363, 1383 (1992), (compensation for taking of "a going concern with a proven record of profitability" is presumptively reasonable if determined "on the basis of the discounted cash flow value").

(a) Dr. Copeland's DCF analysis

162. Dr. Copeland applied this valuation methodology to ČNTS as of August 5, 1999. The first step in this analysis, determining ČNTS' predicted future cash flows, started from CME's 1999 Forecasts for ČNTS. Dr. Copeland tested these projections against the forecasts of independent industry analysts, noting that CME's advertising revenue forecasts for ČNTS were very closely in line with the "consensus net advertising revenue

forecast" generated by five market and industry analysts who published forecasts for ČNTS in late 1998 and early 1999, prior to the destruction of ČNTS' business.

163. Dr. Copeland critically evaluated the reasonableness of each assumption contained in CME's 1999 forecasts — probing their bases and testing them against the historical operations of ČNTS, general economic expectations, publicly available information and his general business knowledge. Dr. Copeland and Monitor recognized in their analysis the conservative nature of CME's approaches to its forecasts. For example, where CME had forecasted Czech inflation rates of 8% to 7% from 1999 through 2005, as a purposefully conservative measure given the Czech Republic's announced program to reduce inflation to 4% to 5%, Monitor concluded that these projections in particular would have been too conservative by August 1999, by which time it was clear that inflation would be far lower (it ended up at 2.1% for 1999 and 3.9% for 2000). In other instances, Dr. Copeland either recognized that the projections were conservative but adopted them, as in the case of ad discounts and acquired programming expenditures, or attached further explicitly conservative modifications to the forecasts to increase his confidence that they could be viewed as entirely reliable, as in the case of projected capital expenditures and several of CME's operating expense projections.

164. To these revenue and expense numbers, and to the resulting conclusions about continuing value of ČNTS after the forecast period, Dr. Copeland applied a discount rate based on the weighted average cost of capital in accordance with conventional valuation practice. This calculation is necessary to determine the current value of a stream of cash flows extending into the future. It involves a process of attaching a notional optimal capital structure to a standalone ČNTS (here Dr. Copeland used a 30% debt-70% equity structure), determining a risk-discounted return rate on equity and debt, and using that rate to reduce projected future earnings streams to a present value.

165. The resulting enterprise valuation of USD 556 million reflects ČNTS' value as of August 1999 on a stand alone basis.

(b) Trading Multiple Valuation based on the ratio of Enterprise Value to EBITDA for Comparable Companies

166. Dr. Copeland tested his DCF analysis through a "trading multiple analysis" in which he calculated values for ČNTS based on the average ratio of 1998 enterprise value to EBITDA for 29 comparable broadcasting companies whose stock is publicly traded in securities markets around the world. Dr. Copeland separated the companies into three geographic regions — the United States, Europe and Asia — to examine comparability of broadcasting companies around the world. While Dr. Copeland's analysis showed no significant variation in EBITDA multiples for broadcasting companies based on geography, the European broadcasting companies had an average EBITDA multiple of 10.6*x*. When applied to ČNTS' 1998 EBITDA of USD54.9 million, this multiple yields a value of USD 582 million. As is evident from the SBS analysis described above, and from the analysts' reports described below, this trading multiple approach to valuation

is also a common method by which buyers and sellers value companies that are going concerns.

(c) The Value Attached to ČNTS by Professional Stock and Bond Analysts in Reports Issued from 1997 to 1999

167. As a check on the figures generated by the foregoing techniques, Dr. Copeland also reviewed the valuations placed on ČNTS by eight separate financial institutions' published analyst reports from 1997 to 1999. These represent all reports by such analysts that CME or Monitor was able to locate that attached a value to ČNTS as a standalone entity. The evaluations of value in those reports are discussed more fully below.

168. Dr. Copeland's best estimate of the enterprise value of ČNTS as of August 5, 1999, "were it traded freely in a liquid market without any change of control" and assuming it were not threatened with loss of its longstanding economic position respecting TV Nova, is USD 556 million.

(d) The Value ascribed to CNTS by Professional Analysts

169. The valuations of ČNTS by SBS, CME and Dr. Copeland are confirmed by valuations of Claimant's investment in the TV Nova enterprise performed by professional stock and bond analysts from eight separate financial institutions between early 1997 and early 1999. A chart submitted by Claimant summarized the methodology and valuation of ČNTS in every published analyst's report known to CME that separately considered the value of ČNTS during this period.

170. These analysts presented their estimates as specialists in the markets in which CME competed and as experts in estimating companies' value. While the most extreme high and low valuations and the precise methodologies used for valuing ČNTS spread over a fairly wide range, the analysts' collective general assessments of value strongly corroborate the results of other methods of valuation.

171. The analysts' reports yield valuations ranging from a high of USD 835 million (at 4 January 24, 1997 Prudential Securities report), to a low of USD 354 million (at 1 December 14, 1998 Schroder report). The core value range across the reports is much narrower than this, though, with six of the eight analysts producing average valuations of between USD 504 and USD 691 million. If each analyst is given equal weight (by averaging all of each individual firm's valuations and treating that average as a single estimate), the mean valuation is USD 572 million. If the high and low figures are excluded, the mean rises to USD 578 million (Monitor Report at 23-24).

172. Six of the eight institutions generating an analyst report that valued ČNTS (Arnhold & S. Bleichroeder, DLJ, ING Barings, MSDW, Smith Barney, and Schroder & Company) did so by way of a trading multiple methodology, which took a relevant financial measure of the company for a given year and multiplied that number by a figure designed to estimate the discounted value of the firm's future earnings, including any expected

growth in earnings (Monitor Report at 19-23). The benchmarks chosen for these valuations were EBITDA and BCF. The average valuation of ČNTS by these analysts applying a "trading multiple" approach to valuation was USD 543 million.

173. Of the remaining analysts, one (SBC Warburg) performed a full DCF valuation based on actual and projected future cash flows for the years 1995-2005, arriving at a valuation of USD 566 million for 100% of ČNTS. A second (Prudential) employed an unelaborated DCF methodology that resulted in a value range across three reports of USD 701 million to USD 835 million, including a specific 1999 valuation of USD 742 million (after adjustment to reflect the value of 100% of the company at 6 Prudential Securities reports dated January 24, 1997, January 20, 1998 and June 2, 1998, respectively).

174. In general, the analyst reports that provided valuations on the higher end of the range were conspicuously more thorough than the reports that generated somewhat lower valuations. For example, DLJ performed thorough due diligence in support of its extensive February 1999 report valuing ČNTS at nearly USD 700 million. The report's primary author, Mark McFadden, not only consulted with CME executives regarding the valuation model, but also personally visited Dr. Zelezný and other ČNTS personnel in Prague and met with other CME station chiefs in Poland and elsewhere in Central Europe in researching his analysis. The resulting report gave particular attention to TV Nova's dominance in the rapidly growing Czech advertising market and to the barriers to new players' entering that market. Although reaching a USD 691 million valuation (after adjustment) on the basis of a 12.5*x* 2000 BCF multiple, the report also concluded that ČNTS' promising future prospects could readily support application of an even higher 12.5*x* EBITDA multiple (which, using DLJ's own projections, would correspond with a valuation of USD 773 million).

175. Similarly, the analyst of Prudential visited several of CME's stations, and valued ČNTS in 1998 at USD 708 million (somewhat lower than its 1997 valuation due to the devaluation of the Czech currency). Prudential's broad-ranging report emphasized that CME was "positioned to gain solid ad market share and to generate significant cash flows over the long term." ING Barings also explained, in a July 1998 report, that several of the unique aspects of ČNTS' market position — including dominant audience share and viewing habits more favorable than those of Western Europe — contributed to an "explosive growth environment" in which its USD 538 million valuation of ČNTS could be described as "conservative."

176. By contrast, two of the three reports valuing ČNTS at less than USD500 million were the conservative estimates of bond analysts, whose analytical goal was to assess the default risk for CME's bonds rather than to pinpoint the value of its shares. (MSDW reports dated August 13, 1998 and February 18, 1999). The third was a summary one-page document, by far the sketchiest of the available assessments of ČNTS alone, that provided no discussion about ČNTS and offered no explanation for valuing ČNTS on

the basis of a low 7*x* EBITDA multiple. (Monitor Report at 22-23; December 14, 1998 Schroder report).

(13) Valuation Result USD 560 million

177. The valuation of ČNTS at USD 560 million falls below the midpoint of the range of results from the various methodologies that have been employed. While it is USD 4 million more than what Dr. Copeland concluded, it is below the valuation SBS attached to a stand alone ČNTS with its rights unencumbered and is less than the average valuation of the independent analysts.

178. This valuation takes no account of the control premium typically associated with a willing buyer's purchase of a controlling interest in a going concern. As the Monitor Report explains (at 25-27), the history of recent purchases of broadcasting companies and related enterprises, and conventional business experience generally, indicate that the price agreed upon by purchasers and sellers of a controlling interest in a successful, cash-generating entity like ČNTS will reflect a premium over the equity value revealed in an analyst's report or in an analysis of enterprise value based on current trading prices or a seller's forecasts. That premium typically reflects the purchaser's belief that with control of the acquired entity it can derive greater value from the entity than the current owner. The control premium that a willing buyer could be expected to have attached to purchasing ČNTS in 1999, and that Claimant could be expected to have attached to selling it, amounts to about 18% of the total enterprise value (Monitor Report at 27). This premium, amounting to USD 100 million on a USD 556 million valuation, is an identifiable component of the value on which a willing buyer and willing seller can be expected to have agreed for ČNTS, and is therefore an entirely valid component of quantum. Claimant has not included the premium component in the final ČNTS valuation figures.

179. Claimant has not included in its quantum claim the lost synergies that would have attached to the SBS purchase if the destruction of Claimant's investment had not first reduced and ultimately eliminated SBS's willingness to buy CME.

(14) Value of CNTS in 1999, minus the Residual Value of CNTS

180. Claimant recognizes that the recovery of the value of its investment in ČNTS should also be reduced by an amount corresponding with the residual value of ČNTS that Claimant could capture after ČNTS' business was destroyed. That value has three components: (*i*) the assets of ČNTS that have been liquidated and upstreamed since CET 21 cut off business dealings with it; plus (*ii*) the liquidatable value of ČNTS' remaining assets today; minus (*iii*) the costs of winding up ČNTS, liquidating assets and maintaining a shell operation to pursue either the recovery of ČNTS' prior position or the orderly shutdown of any remaining activities. The total net residual value of ČNTS under this approach is about USD 27.5 million, which is calculated as follows:

181. ČNTS' dividends upstreamed to Claimant after August 5, 1999, in February 2000, March 2001 and April 2001, amount to USD 19,127,000. This figure includes cash on hand at the time of CET 21's severance of relations and final payments by advertisers shortly after August 5 for prior showings of advertisements, as well as proceeds from the sale of programming rights and certain moveable assets including ČNTS' programming library, the value of which fell radically after ČNTS lost its vehicle for broadcasting the programs. Those sales have reflected Claimant's efforts to minimize its losses from the destruction of ČNTS' business.

182. CNTS still has a modest residual value, attached to its empty buildings and to equipment that is not readily saleable. The total estimated market value of these assets is approximately USD 10,565,000. The residue of ČNTS' prior library of films and television shows is virtually without value, since the rights to broadcast most of these programs have expired.

183. As of September 30, 2001, ČNTS also had cash on hand of USD 2,096,000, plus net receivables of USD 2,591,000, most of which arose from the sale of equipment such as a new mobile ENG van, and some programming rights. These figures are offset by ČNTS' payables, accrued liabilities and other liabilities, which amounted to USD 1,656,000 as of September 30, 2001. They are also offset by the ongoing costs of maintenance of the company and by the final liquidation costs running from September 30, 2001. The ongoing maintenance costs relate primarily to the skeleton staff that exists today to administer ČNTS, to pursue recovery of ČNTS' prior position and ultimately to pursue an orderly shutdown. CME's current estimate of the costs of ongoing maintenance from September 30, 2001 through an assumed windup of ČNTS on December 31, 2002 amounts to USD2,166,000. CME also estimates that the costs of achieving final liquidation of ČNTS' assets, such as selling its building and remaining assets, will total USD 2,986,000.

(15) Claimant's Recovery should not be reduced based on the possibility of a favourable outcome in the Czech Court Proceedings

184. The Tribunal observed in the Partial Award that it might inter alia have to be determined in the quantum phase, or in a later national enforcement proceeding, whether Claimant's recovery based on the lost value of ČNTS should be subject to the possibility of reduction, depending on the developments in the ČNTS action against CET 21 in Czech court.

185. In respect to the Czech proceedings there is no danger of any double recovery by the Claimant. Czech law prevents such an occurrence. Furthermore, the Claimant has expressly undertaken to prevent any such outcome.

186. The Czech Supreme Court's November 14, 2001 decision cancelled the High Court's decision that CET 21 had properly terminated its Cooperation Contract with ČNTS based on the non-delivery of the daily broadcasting plan on August 5, 1999. Instead of

reinstating the Prague Regional Commercial Court's finding that this termination had been improper, though, the Court merely concluded that the record had not been made sufficiently on this point to support either of the lower courts' rulings. As a result, the Court remanded to the Prague City Court (which has replaced the Regional Commercial Court) for development of a record and a determination of whether the non-delivery of a daily broadcasting plan had constituted such a pivotal breach and threat to the license as to justify termination. The Supreme Court's decision also led to the necessity for ČNTS to itemize all activities respecting TV Nova that it contends it is contractually entitled to engage in on an exclusive basis.

187. This result means renewed development of evidence, written submissions and hearings, another lower court decision that will not be enforceable until tested on appeal to the High Court, and a possible second recourse to the Supreme Court before there is even a final determination on the merits of this dispute. Although the Claimant believes ČNTS' position is well-founded, the ultimate outcome of this process remains entirely uncertain, and no final resolution can be expected for at least two more years.

188. Even the most favorable possible outcome of this proceeding would not result in recovery of relief by ČNTS at any time soon after a final decision on the merits. As this Tribunal has previously noted, a favorable final award in ČNTS' action "will not remedy the Claimant's investment situation. CET 21 may well, at any time, terminate again the Service Agreement for good cause, whether given or not, thereby recurrently jeopardizing the Claimant's investment" (Partial Award Art. 414). Public comments by Dr. Zelezný strongly support this finding, indicating that this is precisely what CET 21 has planned. Following the High Court's ruling in favor of CET 21 last December, Dr. Zelezný stated at a press conference that CET 21 had planned for a possible negative ruling by preparing to force an immediate new "breach" of the Cooperation Agreement that would allegedly serve as grounds for CET 21 to once again terminate relations.

189. The risk of non-compliance with an award in ČNTS' favour is exacerbated by positions asserted by members of the Czech Media Council and the Parliamentary Media Commission respecting the meaning of provisions in the new Media Law that became effective in 2001, requiring that that every license-holder operate the television station "in its own name" and "on its own account." The Chairman of the Czech Parliamentary Media Commission, a member of that Commission, and the current Chairman of the Media Council have indicated at a meeting of the Parliamentary Media Commission on November 28, 2001 their belief that exclusivity of contracts between television license holders and so-called service providers is not allowed under the revised Media Law. These assertions further confirm the risk that CET 21 or the Media Council, or both, would react to a final court decision ordering ČNTS restored to its prior position with opposition or evasion rather than compliance.

190. Moreover, the prospects of enforcing a positive judgment are uncertain.

191. The Czech Supreme Court's decision consequently does not alter the reality that the prospects for a meaningful recovery in ČNTS' action are uncertain, and relegated to the distant future. Even assuming a final enforceable and enforced decision restoring ČNTS to its prior position, however, the restoration effort would take approximately one year and cost ČNTS at least USD 39 million, assuming sincere CET 21 cooperation, during which time ČNTS would not yet be able to perform all of the functions it was performing in 1999 in the same measure as before. Full restoration simply could not be accomplished without CET 21's full cooperation. CET 21's full cooperation is, however, hard to imagine.

(16) Interest Claim 12 % p.a.

192. Claimant is entitled to interest on the principal sum of its award running from August 5, 1999, the date of Claimant's loss. Although international law does not specify any methodology for calculating the appropriate rate of interest, and tribunals have differed substantially in the measures they have awarded, the fundamental principle is clear: the award of interest should ensure the full compensation of the claimant. Full compensation requires the interest to run from the date of the Claimant's loss until final payment *(Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3 (1992), *reprinted in* 32 I.L.M. 993, 981-82 (1993)).

193. Under Czech statute and administrative regulation, binding on Czech state bodies as well as private parties, the interest rate payable in the event of a finding of liability is fixed at double the Czech National Bank's official discount rate prevailing on the first day of delay in repayment of the debtor's monetary obligation. (Art. 517 Czech Civil Code; Art. 1 June 8, 1994 Czech Ministry of Justice Decree). This fixed rate remains applicable regardless of economic conditions or the positions of the parties. The discount rate was 6.0% throughout August of 1999, so that the applicable interest rate is 12.0%, running from the day after the Respondent defaulted on its obligation until the date of payment.

194. The setting of the interest rate at double the discount rate reflects the determination by the Czech Ministry of Justice, which promulgated this interest rule, that this is the rate that properly compensates victims of a wrong for the time value of delayed payment of funds to which they become entitled in an action. In light of the Czech State's official legal position on what constitutes fair compensation for delays in payment, the Tribunal should apply at least that rate to the delay in payment for the investment loss experienced in the Czech Republic by Claimant, whose business was solely centered in the Czech Republic. That result accords also with Article 8 (6) of the Treaty, which authorizes the Tribunal to consider "the law in force of the Contracting Party concerned" (that is, Czech law) and with the provision in Article 3 that the "full security and protection" accorded to foreign investors "shall not be less than that accorded […] to investments of its own investors."

195. Claimant's own borrowing rates in the Czech Republic support application of the 12.0% statutory interest rate. On August 1, 1996, CME borrowed CZK 850 million from the Czech Savings Bank ("CSB") to fund CME's purchase of CSB's shares in ČNTS and agreed to pay interest on this loan at a rate of 12.9%. That interest rate remained in effect continuously thereafter, including in August 1999 (with an outstanding principal balance of CZK 547.6 million on August 5), until CME renegotiated the loan in October 2001. The current terms apply a variable rate corresponding with 3.5% over the twelve month Prague Interbank Offered Rate ("PRIBOR Rate") — 4.94% on this quarter's calculation date, November 27 — yielding a current interest obligation of 8.44%. As of August 2002, the blended interest rate on this loan over the three years since Claimant lost its investment will have been almost identical to the 12% statutory rate.

196. If interest were to be based on Claimant's borrowing rate or any other benchmark other than the Czech statutory rate, the Final Award should provide for annual compounding of the interest award. Tribunals hearing investment dispute cases have been increasingly awarding compound interest in relation to the valuations of property or property rights, in recognition of the financial reality that earned interest is put to use as working capital, and that simple interest consequently does not provide a full recovery.

III.
The Position of the Respondent

(1) The Tribunal's Obligation to Reconsider the Partial Award

197. Respondent complained in its Statement of Defense respecting Quantum dated July 1, 2002 that the Claimant had not sufficiently complied with the Tribunal's orders to produce documents and alleged that the Claimant sought to frustrate the proceedings, which is evidenced by the Tribunal's orders. Further, the Claimant in the view of the Respondent failed to plead issues to be resolved at the Quantum Phase.

198. The Respondent's view is that the Tribunal first is obliged to reconsider the Partial Award due to the rendering of the Final Award of the London Tribunal and due the "Common Position" of the Czech Republic and the Netherlands on the interpretation of the Treaty.

1. The Final Award of the London Tribunal

199. The Respondent's view is that the rule of res judicata must be applied by the Tribunal at the Quantum Phase. To the extent that the Partial Award differs from the London Final Award, the terms of the latter must prevail. The London Final Award not only was res judicata at the time the Partial Award was issued; it remains res judicata for the Quantum Phase and, therefore, cannot be ignored by the Tribunal.

(i) Res Judicata as it applies to these proceedings

In traditional theory, the principal of res judicata presupposes the identity of subject matter, cause of action and parties. The nature of international arbitration, however, where parallel arbitrations and the risk of conflicting awards arise out of bilateral investment treaties ("BIT's"), produces factors that differ from those found in national court or arbitration proceedings.

(a) Sweden is the seat of the arbitration. Swedish law applies the principle of res judicata by way of analogy with chapter 17, section II of the Swedish Code of Judicial Procedure.

(b) Czech law applies the principle of res judicata in the same way as Swedish law. Both Czech law and international law are also relevant in respect to res judicata, depending whether res judicata is a procedure or an issue of substantive law.

(c) res judicata is (also) a general principle of international law and has been applied by international courts and tribunals.

(ii) same subject matter and same cause of action

200. The parallel proceedings in London and Stockholm derived from the same circumstances, concerned the same subject matter. Both Mr. Lauder and CME invoked the same cause of action under the respective BITs, i.e. claiming that the Czech Republic breached identical obligations under each BIT to: provide fair and equitable and full protection and security; prohibit arbitrary and discriminatory conduct; and prohibit expropriation without compensation. The slight differences in language between the two treaties could have no effect.

201. The Respondent refers to the Southern Bluefin Tuna case (Australia and New Zealand v. Japan, Award on Jurisdiction and Admissibility (2000) 39 ILM 1359 at 1388), where the tribunal indicated that a reference to two different treaties does not necessarily indicate that there are two distinct claims.

202. In these proceedings, the differences between the two treaties (the U.S. Treaty and the Dutch Treaty) are insignificant compared with the differences between the two Conventions in the Southern Bluefin Tuna case. The rights upon which CME relies are essentially the same in the London and the Stockholm proceedings.

203. In both arbitrations, Mr. Lauder and CME sought, primarily, reinstatement of the benefit of the common investment and, secondarily, damages from the Czech Republic as a result of allegedly suffering loss of that same investment. In both arbitrations, virtually identically written pleadings were filed, the same witnesses submitted virtually the same witness statements, substantially the same arguments were made to the two tribunals by the same counsel, instructions given by the same representatives of the parties, and this Tribunal had access to the same testimony given to the London Tribunal.

(iii) Same parties

204. There is no absolute requirement of "identity" of parties in Swedish procedural law. There is a general principle that the parties must be the same; but the rule is to be interpreted in accordance with the purpose of the principle of res judicata, i.e. that a third party shall not be restricted by submissions made by other parties in protecting its rights.

205. International tribunals have increasingly disregarded the separation of different legal entities within the same corporate group and the distinction between a shareholder and its corporate vehicles. International arbitration cases have considered parties which constitute "*one and the same economic reality*" as the same party.

206. BITs aim to protect investors who have directly or indirectly invested in the host state. It is not unusual that, for tax planning purposes, international investments are undertaken through a chain of entities in different jurisdictions. Many BITs protect the ultimate investor who is at the top of the chain of entities, whether he has a direct or indirect investment. From the perspective of the investor's State, a BIT is entered into by that State in order to protect its natural or legal persons when investing in another State, even if the investment is made via legal persons in other jurisdictions.

207. Accordingly, BITs have the effect of "*lifting the corporate veil*" to the benefit of the ultimate shareholder. The ultimate shareholder is thereby given a right of action to bring a claim in his own name in relation to the loss suffered by a company in which he is a direct or indirect shareholder. Mr. Lauder exercises control over CME, which is the sole basis on which he could commence the London Proceedings. The CME Ltd's 10 K Filing for 2001 stated that the London proceedings were initiated by Mr. Lauder "*in his personal capacity as a U.S. national who owns or controls (by virtue of his voting over the Company) an investment in the Czech Republic*".

208. The Respondent submits that the standard of "*virtual identity*" or "*essentially the same*" identity is appropriate in this case. This standard implies that, where closely related parties (in a financial and legal sense) are present, *res judicata* applies. Both BITs, the U.S. Treaty and the Dutch Treaty, look to the underlying nationality of the investor, not to his formal identity.

209. Mr. Lauder claimed through CME, which was one of the links in the extended chain between himself and the investment in the Czech Republic. All of the companies in the chain (except the parent company, CME Ltd.) are wholly-owned and non-operative, and under the effective control of Mr. Lauder.

210. Mr. Lauder sought restitution of the license for the benefit of CNTS, through himself in London Proceedings and through CME in these Stockholm Proceedings. The ultimate interests in any damages that might be awarded in either case are the same.

211. Under Article III of the New York Convention, which has been incorporated into Swedish law through the Arbitration Act 1999 (Section 53), the Tribunal having its seat in Sweden, is bound to recognize the Final Award made in London, which became final and binding on 3 September 2001 by virtue of Section 58(1) of the Arbitration Act (UK) 1996, also for the Quantum Phase.

2. The effect of the London Final Award on these proceedings

212. This Tribunal cannot undo the findings of the Partial Award; but it cannot base its decision on quantum on matters decided in the Partial Award, if the London Final Award has held differently.

213. If the Media Council did not deprive Mr Lauder of his "legal security" in breach of the U.S. Treaty, it did not deprive CME of that same "legal security" in breach of the Dutch Treaty. Thus, the Czech Republic has no liability for any losses suffered by Mr. Lauder or CME for a "deprivation" which the London Tribunal has held did not occur.

214. According to the London Tribunal, the issuance of the letter of the Media Council dated March 15, 1999 was not a breach of the U.S. Treaty and did not deprive CNTS of the exclusivity of its relationship with CET 21. The same must be true for the purpose of the Dutch Treaty, and the Respondent has no liability for any losses suffered by Mr. Lauder or CME for a harm which the London Tribunal has held did not occur.

215. The overall effect of even these two elements of the Final Award binding this Tribunal is that CME's entire claim for damages is bound to fail. Despite the fact that this Tribunal is bound to proceed on the basis of the Partial Award *on liability*, the amount of damages that flow from that liability is nil because no losses for which the Media Council or the Czech Republic are responsible can be determined in the light of the London Final Award.

3. The common positions bind this Tribunal

216. The Respondent's position in respect to the agreed minutes on the Common Position of the delegates of The Netherlands and the Czech Republic is that the two contracting States reserved to themselves the exclusive competence to decide on how the Treaty should be interpreted and applied. The Tribunal has no more competence to state how the Treaty shall be interpreted and applied than any one of the State parties unilaterally. To the extent that a tribunal makes an incorrect interpretation or misapplies the Treaty, the States parties can overrule the tribunal's mistake. The power to cancel or change the award lies with the courts of competent jurisdiction in the country where the arbitration took place.

217. The common positions, representing the interpretations and application of the Treaty agreed between its contracting parties, are conclusive and binding on the Tribunal.

4. The Effect of the Common Positions

218. The statement of common position on the applicable law echoes precisely the language of Article 8.6 of the Treaty. The Tribunal failed to apply the law chosen by the States parties in deciding on the Partial Award.

219. For the Quantum Phase the common position relating to applicable law shall apply: The Tribunal is obliged to make its decisions on the basis of the law, not *ex aequo et bono*. The Tribunal is obliged to take into account four specified sources of law, out of which only three are available: the law of the Czech Republic as host state of the investment, the Treaty and general principles of international law. No other source of law is available. Only to the extent that there is a conflict between Czech law and the Treaty or general principles of international law, the Tribunal shall apply international law.

220. The second common position limits the claims that can be pursued in these proceedings. In the Partial Award, the Tribunal held that the Czech Republic was liable to Claimant for breaches of the Treaty committed by the Media Council in 1996 and 1999. In fact, the Claimant was not created until 1997, after the 1996 events had occurred. The Czech Republic submitted that the Claimant could claim only (if not all) in respect of breaches which had taken place since it acquired the investment from CME Media on 21 May 1997. The Tribunal held that the Claimant, when it acquired the shares in CNTS in 1997, also acquired "*all rights and legal entitlements*" of the predecessor shareholders, CEDC and CME Media.

221. The Respondent's view is that the Partial Award does not make clear what these "*rights and entitlements*" are; but assumes, implicitly, that they include the rights of Claimant's predecessors in title to bring claims in respect of breaches of Treaty obligations which took place prior to the date Claimant acquired the CNTS shares.

222. The Partial Award discussed the fact that the Treaty "does not distinguish as to whether the investor made the investment itself or whether the investor acquired a predecessor's investment". In the eye of the Respondent this provides no explanation or reason as to how the Claimant, a qualifying investor only since May 1997, becomes entitled to bring claims in respect of supposed breaches of the Treaty when it was not an investor.

223. The Claimant must show that each of its predecessors had good claims against the Respondent arising during their respective periods of holding the investment and that those predecessors had assigned their right to bring those claims to the Claimant and that those several claims could merge into a single claim.

224. One investor can assign an existing investment to another. The successor thereby becomes a new investor for the purpose of whatever BIT has been entered into his State of citizenship or incorporation. However, the right to claim under a BIT is a personal right of each investor. This is not changed because the "*investor*" may be someone ei-

ther who owns directly the qualifying investment or who controls it indirectly another legal entity. Each may have distinct rights; and each such right may arise under distinct BIT's depending solely on the country of nationality of each investor. There may be two or more investors holding the same investment. Thus, treatment of the investment by a host State may simultaneously violate more than one BIT, giving rise to substantially similar rights to claim under each BIT (the principles of *lis pendens* and *res judicata* rules to be applied).

225. CME Media had the right to claim in respect of both the events of 1996 and those of 1999 because it alone was the investor affected, directly or indirectly, by the Media Council's acts or omissions throughout that period. But that claim has never been presented to this Tribunal.

226. No assignment of CME Media's claims took place: In the Agreement on the Transfer of Participation Interests dated 21 May, 1997 there was no express transfer by CME Media of its right to claim in respect of the 1996 conduct of the Media Council; and any such right did not pass by operation of Czech law. Even if an assignment took place, this would not have had any effect as the breach of Treaty in 1996 was the deprivation of "*legal security*" for CNTS. This was a claim without a purpose, because CME Media suffered no loss prior to the time it assigned the shares to Claimant. Claimant's loss occurred, in the finding of the Partial Award, because of the "*combination*" of the 1996 loss of "*legal security*" with Media Council's letter March of 1999. Independently, neither act gave rise to any claim under the Treaty in the findings of the Tribunal.

5. Bifurcation of Liability and Quantum

227. In the First Phase the parties requested the Tribunal not to rule on Quantum until liability, if any, had been established in a Partial Award (in para. 48 of the Partial Award).

228. The parties did not address issues of quantum in their pleadings in the liability phase of this arbitration. The Respondent's view is that in the Partial Award, the Tribunal has addressed issues of Quantum in particular by addressing issues of causation.

(2) Respondent's Factual Narrative

229. The Respondent submitted an extensive narrative, which only partly related to the Quantum of the case. That narrative is summarized in the following paragraphs.

1. 1996 and 1997 Events

(a) 1996 Amendments to the Media Law

230. During 1995, Dr. Zelezny lobbied for a change in the Media Law to enable license holders to have broadcasting conditions relating to licenses ("license conditions") cancelled. The new law took effect on January 1, 1996. On January 2, 1996, CET 21 applied for the removal of most of the license conditions, including Conditions 17 and 18. The Media Council had no option but to comply with CET 21's request but was con-

cerned that, without these Conditions, it might have little power to regulate broadcasting by TV Nova. Once the license conditions were removed, the Media Council had no regulatory authority over CNTS. If CNTS had become the de facto broadcaster of TV Nova, it would thus be entirely unregulated.

(b) CME Media sought control of CET 21

231. In late 1995 or early 1996, four of the five founding shareholders of CET 21 wished to sell the interest they held in CNTS through the shares in CET 21. CME Media decided to purchase the interests of these shareholders. On February 8, 1996, the Board of Directors of CME Ltd approved for CME Media to purchase 5.2% of CNTS from these shareholders of CET 21. The Board also approved that CME Media should acquire an option to purchase 43.4% of CET 21 shares to ensure that CME Media or CME Media's designee and Dr. Zelezny would own collectively 60% of CET 21.

232. CME Media itself would have been unable to acquire these shares in CET 21, the license holder, save through permission from the Media Council. Therefore, Dr. Zelezny, who had already acquired 16.7% of the CET 21 shares, would "*front*" the broadcaster on behalf of CME Media. CME provided Dr. Zelezny, by way of a loan, with the funds necessary to enable him to increase his interest from 16.67% to 60%.

233. On or about February 9, 1996, CME Media and CET 21 entered into option agreements with the CET 21 shareholders for the purpose of carrying out these two transactions. In this way, CME Media "*acting through its trustee*" secured control of CET 21 without notifying the Media Council. CME Media provided Dr. Zelezny with the necessary funds. On June 27, 1996, CNTS entered into a Network Access Agreement with CME Media whereby CME Media was to provide to CNTS its technical production of know-how, production contracts developed with the CME network, and use of CME Media's name. CNTS undertook to pay CME Media an annual royalty fee of 2.5% of its net operating revenue.

(c) Media Council commences administrative proceedings against CNTS

234. By letter dated July 23, 1996, the Media Council advised CNTS that, as recommended by the Institute [Dr. Barta], the Media Council was commencing administrative proceedings against CNTS seeking the imposition of financial sanctions for unauthorized broadcasting in breach of the Media Law. There were three grounds for such proceedings: (i) the incorrect description of the business activities of CNTS in the commercial register, (ii) that CNTS rather than CET 21 had entered into contracts with Czech Radio communications and OSA; and (iii) the lack of control by CET 21 over the disseminated programs. The Tribunal observes that this characterization of the Media Council's letter by the Respondent contrasts with the Tribunal's findings in the Partial Award.

(d) CME Media takes control of CET 21

235. On August 1, 1996, CME Media provided a further loan to Dr. Zelezny of USD 4.7 million, to enable him to buy an additional 43.3.% stake in CET 21 (from the four selling

shareholders) thus increasing his holding from 17% to 60%, which he did. The loan agreement provided that Dr. Zelezny would exercise his voting rights only as directed by CME Media (Articles 8.3 and 9.4). A number of provisions of the loan agreement enabled CME Media to obtain security for its control over Dr. Zelezny's additional 43.3% interest in CET 21. The provision that Dr. Zelezny exercised his voting rights in favour of CME Media was never put into effect. Also, CME Ltd. confirmed this provision in its Quarterly SEC Report in 1996.

236. CME Media provided the loan to Dr. Zelezny on a number of conditions, one of these being that Dr. Zelezny was to procure the purchase of 5.2% of the shares in CNTS from the founders of CET 21, so that Dr. Zelezny would on sell these shares to CME Media. The Respondent is of the view that the attempted control by CME Media of CET 21 was in breach of the requirements of the Media Law and the license, as Condition 17 of the license required the Media Council's prior approval of the arrangement.

237. The Media Council became aware of the loan agreement of August 1, 1996 in late 1996, from CME Ltd's U.S. SEC filing. It appears that the loan agreement did not become effective as CME Media and Dr. Zelezny replaced it and the underlying security documents by the Agreement on Mutual Rights and Obligations. The loan was renewed by a new loan agreement dated February 24, 1997 (without permanent controlling rights for CME Media in CET 21).

(e) CME Media, CET 21 and CNTS amend their relationship

238. On October 4, 1996, CET 21 and CNTS presented to the Media Council CNTS' defense to the administrative proceedings; CNTS and CET 21 proposed that they enter into a new business agreement and provided the Media Council with a copy of such an agreement which had been entered into that day. CNTS and CET 21 also proposed changes to be made to the MoA, the Commercial Register and the agreements with Czech Radiocommunications, OSA and Integram.

239. An expert valuation dated November 12, 1996 of CET 21's contribution of the right to use the know-how of the license was submitted by CNTS to the Commercial Court in order to register the amended MoA with the value of 1996 CZK 48 million, the same value as CET 21's contribution of the use of the license was valued at in 1993. On November 14, 1996, the MoA of CNTS was amended to read that CET 21: "contributes to [CNTS], unconditionally, irrevocably, and on an exclusive basis, the right to use, make a subject of [CNTS'] benefit, and maintain, **know-how** related to the license, its maintenance and protection." Other changes were made to the MoA, including a new Article 10.8, which were also extensively dealt with in the Partial Award. Contrary to the findings of the Tribunal in the First Phase of the proceedings, the Respondent is of the opinion that there is no evidence that such an amendment was approved by the Media Council or was a condition of withdrawal of the administrative proceedings which were not discontinued until September 1997.

240. In December 17, 1996, Condition 17 was removed by the Media Council with legal effect from February 17, 1997 [February 25, 1997 effective date according to Respondent's Exhibit RQ35]. By December 1996, one month after the changes to the MoA had been made, Dr. Zelezny had obtained 60% of the shares in CET 21 and CME Media had acquired an additional 27.2% of the shares in CNTS.

241. In January 1997, the Media Council met with CET 21 and Dr. Zelezny in order to find out more about the loan agreement between CME Media and Dr. Zelezny. Dr. Zelezny assured the Media Council that the loan agreement was not going to be fulfilled. It appears from amendments to the loan agreement dated February 24, 1997 and March 11, 1997 that CME Media forgave Dr. Zelezny the loan in return for transfer of the 5.2% shareholding in CNTS:

(f) Completion of the changes requested by the Media Council

242. In 1997, CNTS and CET 21 continued to implement the changes to their arrangements proposed to the Media Council. In February 1997, the change of business activities of CNTS was registered with the Commercial Register. On May 21, 1997, CET 21 and CNTS entered into a Service Agreement, which superseded the October 4, 1996 agreement. The Service Agreement defined the respective roles of CET 21 and CNTS in the broadcasting of TV Nova. The first amendment to the Service Agreement, entered into on the same day, provided that CET 21 would sell advertising time on behalf of CNTS but that CNTS was entitled to all advertising revenue subject to paying CET 21 a management fee of CZK 100.000 per month.

243. On September 16, 1997, the Media Council formally decided to discontinue the administrative proceedings against CNTS. Premiera TV and Radio Alfa eventually made similar changes to their arrangements and the administrative proceedings against their respective service providers were discontinued on December 14, 1998. The Respondent's view is that it was clear that CME Media believed that nothing had changed as a result of the package of measures that were adopted. And nothing did change the commercial success of TV Nova for the significantly increased benefit of CME Media which owned 93.2% of CNTS and controlled 60% of CET 21 through Dr. Zelezny. Neither the CNTS 1996 Annual Report nor SEC filings of CME Ltd. reflect any fear that the administrative proceedings or the changes made to the relationships at the request of the Media Council might have any adverse impact on its investment in CNTS. The 1996 Annual Report merely noted that "*No determination adverse to Nova TV was made by the Czech Radio and Television Council*".

2. Nova Consulting transfers its 5.8% in CNTS to CME (Respondent)

244. On January 8, 1997, Nova Consulting acquired a 5.8% interest in CNTS after an increase in CNTS' share capital. On May 21, 1997, the Claimant purchased CME Media's by then 93.2% shareholding in CNTS. The Claimant consented, in Article 4 of the agreement on the transfer of participation interest in CNTS, to the MoA "*without any reservation*". That day, Nova Consulting offered to sell its 5.8% interest in CNTS to

CME Media for USD 5.5 million per point or USD 32,190,000 for the entire 5.8% holding. This purchase price was internally criticized by the CME Management. Mr. Cox was of the view that such a valuation of CNTS of USD 5.5 million was extraordinarily high and significantly above the market value (which was in his view between USD 3.25 and 4.25 million). On August 11, 1997, CME Media purchased 100% of Nova Consulting thereby acquiring indirectly a further 5.8% interest in CNTS for USD 28,537,500 (corresponding to USD 492 million for 100%). An important element of this Share Purchase Agreement was the "non-compete" clause preventing Dr. Zelezny from carrying out any activity that would be in competition with CNTS. On December 9, 1997, the Claimant acquired the 5.8% interest in CNTS.

3. Formation of AQS (Respondent)

245. On June 3, 1997, the Claimant started working on the establishment of a program acquisition company, to be called AQS a.s. ("AQS"). This idea had been discussed by the CME Board in May 1997. The purpose of this company was to acquire programs for use within the territory of the Czech Republic for TV Nova and other Czech TV stations. Apart from future acquisitions, CME intended that this company should acquire CNTS' existing program library.

246. In October 1997, CME and CNTS agreed that a new program services company would be established to acquire programs for TV Nova. The company was to be jointly owned by the Claimant, CNTS, Prima TV and Galaxie. AQS was to buy programs not only for TV Nova, but also for other Czech television stations. AQS was created so as to be independent of CNTS, in order to make savings in program acquisition costs. CME intended to hold a majority interest in AQS.

247. In October 1997, CME and CNTS discussed the formation of AQS. On January 6, 1998, the foundation deed of AQS was executed. The founders of AQS were a company called SEM (96%), with the remaining 4% owned by Mr. Petr Sladecek, Director of programming services of CME Media. CME was aware of the formation of AQS by at least February 1998. CME sought to be involved in AQS. In a letter of June 18, 1998 and at a meeting on July 8, 1998, Mr. Delloye told Dr. Zelezny that program acquisition was a critical function performed by CME and that CME would not allow this function to be performed by a third party over which CME had no control. However, the acquisition of programs by AQS for TV Nova went ahead without any involvement of CNTS and CME control.

248. On September 24, 1998, CET 21 and AQS had entered into a formal agreement whereby AQS would purchase broadcasting rights to foreign and domestic programs for CET 21. AQS was the exclusive purchaser of programs for CET 21. The broadcasting rights would then be transferred to CET 21. On the same day, CET 21and CNTS agreed that CET 21 would transfer to CNTS broadcasting rights acquired by and received from AQS, and CNTS would pay for the broadcasting rights to the programs. On

September 29, 1998, CNTS provided an unlimited guarantee for all payments by AQS for the acquisition of programs.

249. On October 1, 1998, AQS commenced operations as an acquisition service provider of programs for CNTS (TV Nova). CNTS employees became executives. CNTS leased office space in its building to AQS. CNTS employees continued to migrate to AQS. CET 21 and AQS agreed that for the period from October 1, 1998 to December 31, 1998, AQS would acquire a volume of programs up to a value of USD 3.8 million. At a later date, CET 21 and AQS agreed to a volume of programs for the period from 1 January 1999 to December 31, 1999 of up to USD 17,288,761.

250. On October 2, 1998 Dr. Zelezny and Mr. Zachs notified program suppliers that AQS had replaced CNTS as the provider of programming to TV Nova. Those letters were accompanied by the unlimited guarantee granted by CNTS in favour of AQS. It appears that CNTS also guaranteed AQS's obligations in agreements with program distributors. It appears that CNTS and CME were fully aware of the operation AQS. The overall effect of the establishment of AQS was to remove a significant part of TV Nova's operations from CME's control and from the economic benefit of CNTS.

4. 1998 / 1999 Events (Respondent)

251. In mid-1998 CME Media Ltd considered selling its interests. By July 1998, SBS was being considered as a potential merger party for CME Ltd. On 4 November 1998, CME Ltd engaged Morgan Stanley to be their financial advisor for a merger or recapitalisation or potential sale of equity or assets of CME Ltd.

252. As early as September 7, 1998, Dr. Zelezny had stated at a General Meeting of CNTS that it was now convenient to re-consider the existing structure of the relationship between CME, CET 21 and CNTS with respect to the Media Council's opposition to the exclusive nature of the MoA.

253. In November 1998, SBS began receiving information from CME Ltd and Morgan Stanley about the operations and financial status of CME Ltd, including information about broadcasting licenses, how operations in each country were controlled, material arrangements and other information relating to operation and broadcasting of the TV stations. On 4 December 1998, at a CME Ltd Board meeting, Morgan Stanley outlined the status of discussions with five potential purchasers of CME Ltd: SBS (advised by Bear Stearns), who had proposed a merger of equals offering a 0.8 share exchange ratio, implying USD21.6 per CME Ltd share. Negotiations with SBS continued in December 1998.

254. On December 8, 1998, Mr. Delloye and Ms DeBruce met with Dr. Zelezny to prepare a Memorandum of Understanding and other documents for the implementation of a long-term agreement. A review of the MoA and the Service Agreement were considered, as well as the structure and terms of CET 21's increased profit participation in CNTS, the

merger between CNTS and CET 21, and the contemplated acquisition by CME of part of Dr. Zelezny's holdings in the newly merged company. On December 10, 1998, Mr. Delloye informed CME Ltd Board of the terms of an agreement in principle reached with Dr. Zelezny regarding the structure of CNTS and CET 21. This included the proposed merger of CME and CET 21.

255. On December 15, 1998, CME and CET 21 entered into an agreement whereby CME agreed not to vote for any amendment of the MoA for a period of two months following execution of the agreement. In return, CET 21 revoked its offer of November 23, 1998 to transfer its 1% ownership interest in CNTS. This was an important issue for CME as a transfer of the 1% ownership interest to a third party would mean that CET 21 no longer had a stake in CNTS' business. On December 23, 1998, Mr. Delloye, Ms De-Bruce and Dr. Zelezny discussed the proposed merger between CNTS and CET 21. Dr. Zelezny indicated that such a merger would not come *"easily and cheaply"*. On the same day, CME DC and Dr. Zelezny renewed their existing consulting agreement (of January 1, 1996) whereby Dr. Zelezny would provide consulting services to CME DC and other CME companies until February 15, 2000 for a fee of USD12,000 a month plus other benefits. Dr. Zelezny was to continue with his duties and responsibilities as General Director of TV Nova at the same time.

256. In January 1999, CME, CNTS, CET 21 and Dr. Zelezny continued to negotiate the proposed restructure of their arrangements. No resolution was reached. CNTS, CME and CET 21 had a meeting on January 25, 1999 to discuss the proposed restructure. Two paths were identified; either to maintain the status quo or to adopt a so-called *"clean alternative"* which consisted of three possible variants of how CET 21 and CNTS would be structured, including *inter alia* the merger of CNTS and CET 21 or their operations. Negotiations between CME, CNTS, CET 21 and Dr. Zelezny continued in February.

257. On February 20, 1999, Mr. Delloye informed the Board of CME Ltd about the status of the negotiations with Dr. Zelezny, and emphasized the need for these negotiations to be concluded for the purposes of the SBS merger. On February 23, 1999, Mr. Lauder informed the CME Ltd Board of an agreement in principle reached between Dr. Zelezny and Mr. Sloan, but that Dr. Zelezny was unwilling to agree to the proposed draft. On February 24, 1999, Dr. Zelezny claimed to the CNTS Board that it was necessary to make changes to the contractual relations between CET 21 and CNTS to prevent the withdrawal of the license.

258. On March 1, 1999, CET 21 and CNTS entered into an Agreement on Future Contracts on the Transfer of Rights in respect of works. CNTS, as the service provider to TV Nova, transferred the rights to use the works it produced to CET 21 given that it was not entitled to broadcast the works itself. On April 20, 1999, CNTS and CET 21 also entered into agreements whereby CET 21 was given the right of access to the property of CNTS and to lease the property of CNTS.

259. At the same time as discussing revised terms with Dr. Zelezny, CME Ltd. continued its negotiations with SBS over the proposed merger. SBS made clear to CME Ltd that an agreement with Dr. Zelezny was a condition of reaching an agreement on the merger. Between February 8 and 18, 1999, SBS carried out an extensive due diligence review of all of the operations of CME Ltd.

260. On February 17, 1999, Mr. Knight presented a valuation of CME Ltd to the Board of Directors of SBS and outlined the merger proposal. Mr. Knight explained that negotiations with CME Ltd had resulted in an exchange ratio of 0.725 shares of SBS for each outstanding share and option of CME Ltd, placing a value of USD19.85 per CME Ltd share.

261. On February 20, 1999, at a presentation to the CME Ltd Board, Morgan Stanley explained that SBS' proposal would represent a 169% premium to the current CME Ltd stock price. Morgan Stanley also noted that the combined entity would generate significant additional shareholder value through the realization of operating synergies of approximately USD 34 million a year by 2000/2001.

262. During March 1999, in parallel with finalizing negotiations with SBS, CME Ltd was finalizing negotiations with Dr. Zelezny. On March 11, 1999, Mr. Lauder sent draft term sheets to Dr. Zelezny outlining a new economic package which was more than twice that which had been previously offered to him. Mr. Sloan of SBS had agreed to this proposal. Further, on March 11, 1999, Mr. Lauder also sent to Dr. Zelezny a draft Outline of New Service Agreement between CNTS and CET 21. In addition to the Service Agreement, CME would acquire an ownership interest in CET 21 from Dr. Zelezny and other shareholders giving it a 36.5% voting share and a 75% economic interest in CET 21. In consideration for this, Dr. Zelezny would receive from CME USD32.7 million and a 15% interest in AQS for nominal consideration. The Service Agreement would provide that Dr. Zelezny could not compete with CNTS or CET 21 whilst he was an executive or shareholder of either CNTS or CET 21. The approval of the Media Council to these changes was a condition precedent to the agreement. In addition, CME Ltd would pay Dr. Zelezny USD100 million as a personal bonus for being the General Director at the time that the license was renewed.

263. At a meeting in London on March 14, 1999, Mr. Lauder and Dr. Zelezny agreed on a new Outline of New Service Agreement between CNTS and CET 21 sent to Dr. Zelezny by SBS on March 15, 1999. The exclusivity between CNTS and CET 21 was removed. In addition, CET 21 was to receive 4% of total revenues, including advertising revenues, from CNTS. After some further modifications, there was agreement between Mr. Lauder and Dr. Zelezny. Dr. Zelezny signed and returned on March 19, 1999 the Outline of New Service Agreement between CNTS and CET 21. It was to take effect on March 18, 1999. This contained no exclusivity of relationship between CNTS and CET 21, and was to continue until replaced by detailed new Service Agreements.

264. On March 2, 1999, in response to a request by CET 21, the Media Council met with Dr. Zelezny. They discussed a number of matters relating to CET 21, including its relationship with its service provider, CNTS. The Respondent characterized the March 2 meeting, Dr. Zelezny's letter of March 3 and the Media Council's letter March 15, as follows: The Media Council's policy in connection with the arrangements between license holders and service providers was discussed. This was a topic of public debate The next day, March 3, 1999, Dr. Zelezny wrote to the Media Council, setting out his summary of the Media Council's policy and asking for a written confirmation of it. On March 15, 1999, the Media Council replied to CET 21 and TV Nova. The Media Council was scrupulous to avoid stepping outside its policy as already stated to the Media Panel. Dr. Zelezny's summary was generally an accurate summary of the Media Council's policy, as expressed at the March 2 meeting and elsewhere. The Media Council was adamant that its letter be perceived as a statement of policy, and publicly released the letter (in the press on its website) on May 11, 1999 in response to allegations in the press that the Media Council was assisting Dr. Zelezny. The Media Council wrote a similar letter to at least one other license holder. The Tribunal observes that this narrative of the Respondent sharply contrasts with the Tribunal's findings in the Partial Award.

265. By March 26, 1999, CME Ltd had issued new share capital. This was the last day the shares were traded before the announcement of the merger with SBS. The share price on that day was USD7.63, which implied a market capitalization of USD196 million.

266. Before or on March 29, 1999, SBS' offer had dropped to 0.5 shares for every CME Ltd share, yielding an implied offer price, based on SBS' current share price of USD30.9, of USD15.45 per CME Ltd share, representing a 102% premium to the March 26, 1999 closing CME Ltd stock price of USD7.63. At a telephone conference meeting of the Board of CME Ltd, on the same day, March 29, 1999, approval was given to the proposed merger. On 29 March 1999, SBS and CME Ltd entered into the Reorganisation Agreement (the merger agreement). Also on March 29, 1999, CME Ltd issued an extensive press release announcing its 1998 fourth quarter and year end results. CME Ltd further stated to the press the following: *"On March 19, 1999, CET provided CNTS with a copy of a letter, dated March 15, 1999 addressed to Dr. Zelezny as executive of CET and signed by the Chairman of the Czech Media Council, in which the Czech Media Council takes positions that appear inconsistent with the existing relationship between CNTS and CET. Among other things, the Czech Media Council has questioned the exclusive nature of the commercial relationship between CNTS and CET and the manner in which CET enters into certain broadcasting-related contracts. CME believes that the structure of Nova TV and the contracts and business dealings between CET and CNTS are in compliance with all applicable Czech laws and regulations. However, there can be no assurance that the Czech Media Council will conclude, as it has in the past, that such dealings are in compliance and there can be no assurance that the Czech Media Council will not require modifications of the arrangements between CET and CNTS".*

267. CME Ltd. further stated that it and CNTS intended to take all available steps to protect their rights and interests in connection with TV Nova; but warned that *"it is possible that the current disagreements with Dr. Zelezny could result in protracted litigation".* CME and CNTS intended to take all available measures to protect their legal rights and financial interests in connection with Nova TV. If the Czech Media Council were to require significant changes in the current arrangements between CNTS and CET, or if the differences between CNTS and CET cannot be resolved, one or more material adverse affects on the business and financial condition of CNTS and CME could result, including a substantial reduction in the economic benefits currently enjoyed by CNTS and CME and, potentially, a termination of the existing commercial relationship between CNTS and CME.

268. Whilst CME Ltd was finalising the terms of the proposed merger with SBS, CME Ltd was also preparing an action plan for taking over CNTS ("Czech Action Plan") by physical control. In April 1999, renegotiations of the terms of merger with SBS continued. CME Ltd. had not yet been able to reach an agreement with Dr. Zelezny over the operation of TV Nova.

269. On April 15, 1999, CME by its lawyer instructed Dr. Zelezny not to take any actions or sign any documents on behalf of CNTS that would change the position of CNTS in relation to, for example, its relationship with CET 21, Czech Radiocommunications, OSA, Integram and AQS, nor to bring any court proceedings against CNTS.

270. On April 19, 1999, the CNTS General Meeting was held in Prague. CME was represented, holding 99% of the shares; and CET 21, holding 1% of the shares. Dr. Zelezny was recalled as director on the grounds that inter alia he had overstepped his powers without the consent of the CME or CNTS Board; acted against the interests of the company, including ousting the company from its most important function, program acquisition, and transferring this function to AQS, in which CNTS did not have an equity interest and issued an unlimited guarantee on behalf of CNTS in respect of the activities of AQS.

271. On April 20, 1999, at a meeting of the Committee of Representatives of CNTS the relation between CNTS and CET 21 was discussed. Dr. Zelezny stated that he had sent, on behalf of CET 21, a letter to the Media Council proposing to resolve the situation by terminating the Service Agreement and entering into a new contract with CNTS whereby CNTS would be granted the same conditions as the contracts concluded with other service organizations. He said that the Service Agreement could not be exclusive as this was contrary to the Media Law; and CET 21 is obliged to operate broadcasting on its own account under the Media Law. Further, Dr. Zelezny's public statements against CNTS were discussed. At the end of the meeting Dr. Zelezny was recalled as director.

272. Dr. Zelezny moved to CET 21 where he took steps to enable it to take over the broadcasting of TV Nova without the collaboration of CNTS. On April 22, 1999, Dr. Zelezny wrote to the Media Council to inform it of his dismissal from the position of General Manager of CNTS. By April 1999, it became evident that a number of program licenses had been assigned to AQS or AQS had replaced CNTS as the acquirer of foreign and domestic programs for TV Nova. By mid-1999, about 33% of program licenses, worth about USD13,630,543 were granted to AQS and CET 21/AQS.

273. On April 19, 1999, the day of Dr. Zelezny's dismissal, Mr. Klinkhammer "told Dr. Zelezny that he must give CME control over AQS or repudiate the AQS arrangement and the letters sent to distributors". According to Mr.Klinkhammer, Dr. Zelezny's response was that the letters had been fraudulently prepared by others.

274. On April 26, 1999, Dr. Zelezny's lawyer informed a foreign film distributor that AQS continued to be the only authorised acquirer of programs for CET 21, the license holder, and that only programs purchase by AQS will be broadcast on TV Nova. On April 28, 1999, CET 21 requested that CNTS fulfill the arrangements for the acquisition of programs for TV Nova by AQS as set out in the General Agreement on Transfer of Rights to Copyright Works dated September 24, 1998. CNTS terminated the lease agreements with AQS whereby CNTS had leased office space in its building and various moveable property to AQS.

275. On April 27, 1999, CME, CNTS and Dr. Zelezny made oral presentations to the Media Council. The Media Council announced to the press that it had been informed by representatives of both companies about the *"current status of resolving the business dispute of both companies and its impact on TV Nova's broadcasting".* It continued:

> *"The Council repeatedly raises its concerns about the fact that the situation is not progressing towards an early resolution which could lead to harming interests of viewers".*

276. A copy of the press statement was sent to CNTS on the same day, under cover of a letter emphasizing the warning about unauthorized broadcasting.

277. Various attempts in May 1999 to settle the dispute between CME and Dr. Zelezny failed. In May 1999, CET 21 and CNTS started to argue above broadcasting issues. In particular, they argued over the delivery of the programming schedule and the content of programs to be broadcast on TV Nova. There were also disputes over the receipt of advertising revenues, unpaid invoices in relation to AQS, compliance with the Service Agreement and other aspects of CNTS' operation of broadcasting of TV Nova. CET 21's requested for new programming procedures. CNTS noted that the programming and scheduling departments continued to operate as before, and assured CET 21 that CNTS would submit any changes to the schedule for CET 21's formal approval. Between May and July 1999, CNTS wrote to foreign distributors informing them that it was CNTS, not AQS, that acquired foreign programs to be broadcast on TV Nova. On Au-

gust 5, 1999, the Managing Director of AQS, informed NBC that CET 21 had begun to use the services of Ceska Produkcni 2000 to broadcast TV Nova and that its relationship with CNTS had been terminated. Only programming acquired by AQS would be broadcast on TV Nova.

278. On 4 May 1999, Mr. Sipovic, on behalf of Dr. Zelezny, met with Dr. Radvan to offer CME 60% of CET 21 for a total purchase price of USD100 million. On May 5, 1999, Dr. Rozenhal suggested to Ms. DeBruce that CME send him a written proposal stating the price at which CME would be interested in acquiring a 60% interest in CET 21.

279. On May 12, 1999, CNTS informed CET 21 that almost 95% of the acquired programming broadcast on TV Nova was acquired from foreign distributors by CNTS directly. CNTS opposed broadcast programs acquired only by AQS. CNTS suggested that the General Agreement on Assigning of Copyrights over the Authorship Works dated September 24, 1998 was fraudulent. On May 21, 1999, CNTS informed CET 21, that CET 21 had breached the Service Agreement and the MoA by authorizing AQS to purchase domestic and foreign programs for TV Nova and the dispute between CNTS and CET 21 on this subject continued throughout 1999.

280. On May 19, 1999, CET 21 issued two Executive Decisions which imposed stringent new procedures on CNTS relating to the broadcasting of TV Nova. The dispute between CNTS and CET 21 over the operation of TV Nova continued into June 1999, with repeated threats by CET 21 to terminate the Service Agreement if CNTS failed to comply with broadcasting requirements. Both companies began to send copies of letters to each other to the Media Council.

281. By letter dated June 24, 1999, CNTS addressed the Media Council and the Czech Parliament requesting the clarification of the Media Council's position with respect to CNTS' relations with CET 21. The Tribunal dealt with this request in the Partial Award. The letter recites the events of 1996 and contains a restatement of the way in which CNTS was established, and the changes made at the request of the Media Council in 1996.

282. The letter then discussed CET 21's recent conduct which was alleged to be contrary to the exclusive relationship which CET 21 itself had acknowledged by its letter to the Media Council dated March 3, 1999. CNTS requested a reopening of the administrative proceedings in order to clarify the status of the license.

283. On June 24 ,1999, the Media Committee of the Czech Parliament requested from the Media Council a written opinion on the dispute between CNTS and CET 21, with particular reference to questions of exclusivity of their agreements and ownership interests in CET 21. On July 7,1999, the Regional Commercial Court of Prague ordered CNTS to refrain from interfering with CET 21's broadcasting of TV Nova. On July 26, 1999, the Media Council provided its formal opinion to the Media Committee. On the same

day, the Media Council wrote to both CNTS and CET 21, enclosing only sections 7 and 8 of its opinion, setting out the risks relating to the continuing dispute.

284. The letters called on both parties to stop immediately their media campaign against each other and to inform the Media Council August 15, 1999 on the steps taken to minimize the risks identified in the opinion and to settle finally the disputes in accordance with the law. On July 29, 1999, the Media Council issued its formal decision, rejecting CNTS' application to re-open the 1996 administrative proceedings against itself. On August 2, 1999, CNTS wrote directly to the Media Committee of the Czech Parliament, responding to the Media Council's appeal of July 26, 1999. CNTS expressed deep disappointment at the Media Council's view (In the Respondent's view not addressed in the opinion) and the Media Council's refusal to intervene. In this letter, CNTS warned that *"should the Council or any other Czech governmental entity make any ruling or issue any statement contrary to the interests of CME and CNTS, it is likely that such ruling or statement would violate the protections afforded by such* [the US and Dutch] *Treaties."*

285. Since June 1999, SBS indicated that it did not wish to pursue a merger that included CME Ltd's Czech operations. CME Ltd and SBS negotiated a smaller merger, whereby SBS would purchase CME Ltd's operations in Hungary and Slovenia. CME Ltd continued to seek discussions with Dr. Zelezny to resolve their difficulties. By July 1999, CME Ltd had failed to reach an agreement with Dr. Zelezny. These negotiations between CME Ltd and SBS over the merger alternatives continue into August 1999. SBS continuously expressed concern over the situation the Czech Republic and suggested a post-merger revaluation of CNTS taking into account. The resolution of the Dr. Zelezny disputes including a resolution of the issues involving ownership of CET 21 and CNTS and access to the Nova license, and a resolution of all other claims between the parties. On or before August 4, 1999, SBS decided not to proceed to merge under the Reorganisation Agreement "*due to uncertainties about the outcome of the dispute between the Company and Vladimir Zelezny and CET 21".*

286. On August 5, 1999, CET 21 terminated the Service Agreement with CNTS. CET 21 thereupon took full control of TV Nova and commenced broadcasting TV Nova from its own studios. On August 6, 1999, CNTS challenged CET 21's purported termination of the Service Agreement. There had been no material violation of the obligations of the Service Agreement. On or about August 31, 1999, CME and CNTS met with the Media Council to complain about the situation with TV Nova.

287. During August and September 1999 CME Ltd and SBS continued negotiations to finalize a transaction excluding CNTS as well as attempting to find alternative terms to the Reorganisation Agreement.

5. Narrative on legal proceedings brought by CME and/or CNTS (excerpt)

288. CNTS, CME, CME Ltd and Mr. Lauder have, between them, commenced numerous legal proceedings against Dr. Zelezny, CET 21, and later, the Czech Republic; some of these proceedings have been mentioned above. The Respondent pointed out that no legal proceedings have been commenced in the Czech Courts by CNTS to enforce the contribution which CET 21 had made to CET 21 in 1993, and which continued to provide CNTS with the basis on which it enjoyed the economic benefits of the license.

289. The Respondent referred to the ICC Tribunal's findings that Dr. Zelezny's actions in relation to AQS were in breach of his non-compete obligations in the Share Purchase Agreement of August 11, 1997. The Respondent pointed out that the ICC Tribunal found that CME Media had not suffered any loss as a result of Dr. Zelezny's breach of the Share Purchase Agreement.

(3) Analysis of the Applicable Law

290. The Respondent's position on applicable law will be dealt with in the Tribunal's Analysis of the Case.

(4) Principles of Causation (Respondent)

291. In its Statement of Defence the Respondent makes voluminous submissions related to the principles of causation under Czech law, international law, the principles of contributory fault, mitigation of losses, and joint tortfeasors, both under Czech law and international law.

1. View about CME's failure to prove causation

292. In re-litigating the Partial Award the Respondent expressed its view that the Claimant failed to prove causation. The Respondent did not find sufficient explanation in the Partial Award of how the Media Council violated each of the five Treaty provisions. The Respondent is of the view that this issue (which in the view of the Tribunal has been extensively dealt with in the Partial Award) must be reviewed as an essential exercise to be undertaken because for the Quantum purposes *"the Czech Republic can only liable for those actual losses, that are reasonably foreseeable consequences of the Treaty violations."*

293. The Respondent is of the view that the 1996 and 1999 breaches of the Treaty must be seen as instantaneous breaches, which were not *"continuing breaches".* The breaches found by the Treaty were committed and completed in 1996 and in 1999 respectively. The Respondent criticizes the Partial Award by suggesting that the Claimant did not prove the causal link between the acts of the Media Council and the Claimant's loss.

294. The Respondent is of the view that the Claimant did not demonstrate that the loss of its entire business was a foreseeable consequence of the conduct of the Media Council. The Czech Republic could not foresee in 1996 that the change of the legal arrangements, tying together the two companies CNTS and CET 21, would result in a break-up

of CNTS and CET 21. The Media Council could not foresee how the relation between the two companies would develop, taking into account Dr. Zelezny's dominating role.

295. The Media Council could not have foreseen "that CNTS would violate the relationship on which TV Nova depended in a manner that put CME's investment in jeopardy". There were no grounds, whatever, for anticipating that such a scenario would be "the natural results of events". The break-up between CNTS and CET 21 was caused entirely by TV Nova, CNTS and CET 21 having carried on their venture unanimously and profitably for three years after the 1996 changes.

296. In respect to the 1999 events, the Respondent is of the view that the Media Council did not support Dr. Zelezny, on the contrary, as evidenced by the Czech Action Plan, it was CNTS which considered taking over TV Nova. In particular, there is no evidence in the view of the Respondent that the Media Council's March 15, 1999 letter had any impact.

297. The Respondent's view is that there is sufficient evidence showing at least from autumn 1998 Dr. Zelezny was seeking a realignment of relations between CNTS and CET 21, one element of which was breaking of CNTS' monopoly on the provision of services to TV Nova, and another element of which was its own financial reward for his work for TV Nova.

298. It emerged that Mr. Lauder wanted to capitalize his investment by selling or merging with SBS. Therefore, Claimant needed to persuade Dr. Zelezny to sell his participation in CET 21. The Respondent points out that the proposed agreements between CNTS and CET 21 negotiated in February and March 1999 between CME and Dr. Zelezny did not provide for exclusivity. CME had agreed, in principle, to remove the exclusive right of CNTS before the Media Council wrote the letter March 15, 1999. Also the March 19, 1999 text removed CNTS exclusivity. Therefore, the March 15, 1999 letter of the Media Council cannot be said to have caused the loss of exclusivity or the re-alignment of relations between CNTS and CET 21.

299. The proximate cause of the Claimant's loss is the August 1999 battle, commenced by CNTS and CET 21. The Czech Republic could not have foreseen their acts. Their acts broke the chain of causation.

2. Contributory Fault

300. CME contributed to the destruction of CNTS' participation in TV Nova by:

(a) Minimising the financial incentive of Dr. Zelezny in the successful operation of TV Nova;
(b) Encouraging Dr. Zelezny to set up AQS as a means of diverting programming revenue from CNTS;
(c) Proceeding and concluding the merger negotiations with SBS (and others) without securing Dr. Zelezny's support;

(d) The dismissal of Dr. Zelezny which precipitated the inevitable battle for control of TV Nova;

(e) The intensification of legal disputes with Dr. Zelezny, for example, by the commencement of ICC arbitration proceedings in the Czech courts raising legal issues on the conditions on which the two companies participated in TV Nova;

(f) The deliberate withholding of the daily broadcasting schedule in the knowledge that CET 21 was looking for an excuse in the legal battle to terminate the Service Agreement.

3. Mitigation

301. Respondent's position is that Claimant was obligated to mitigate losses. Related to any losses suffered from the 1996 changes to the MoA, CME Media was immediately under a duty to mitigate any consequent injury, however, it chose to increase its shareholding in CNTS, and accordingly to increase its *"share"* of the exposure to any losses arising from the injury occurred to CNTS at that time. Ms. DeBruce warned the CME Ltd's senior management of the potential weakening of the relationship with CET 21 that would result from the changes to the MoA. Even if CME Media was coerced to change the MoA, under no circumstances can such coercion extend to increasing its shareholding. CME Media failed in its duty to mitigate, and no damages may be recovered in respect of the additional shares that it bought after the 1996 changes.

302. At most, compensation would be due only in respect of the shares held before the 1996 changes.

303. The Tribunal has found that the Czech Republic breached the Treaty in 1996, and in March 1999. The breaches had been committed before August 5, 1999. CME was under a duty to mitigate its losses from the moment that it was aware of the circumstances giving rise to the breach. CME did exactly the opposite. In 1999, it chose to take two steps that would put its investment in the greatest possible jeopardy: (i) by dismissing Dr. Zelezny, thus driving him - literally – across the road to the company he had been put into control of by CME Media; and (ii) by directing CNTS to withhold the Daily Broadcasting Schedule providing CET 21 with an excuse (valid or not) to break its contract with CET 21 and takeover TV Nova. This was a failure to mitigate losses.

304. Various actions could have been taken against Dr. Zelezny and CET 21 in the Czech courts to retrieve the position. Some actions were taken. The Czech Republic can take no position on the merits of any such actions. CME did not avail itself of the facility that the Czech courts offered for obliging Dr. Zelezny to act lawfully towards and in respect of the companies in which he had an interest. CNTS could still avail itself of the right of the contribution made by CET 21 in 1993 which remains the basis of CNTS' business. These failures to take such reasonable steps eviscerate any claim for damages Claimant may have.

4. Causation and Intention

305. The Respondent criticized the Tribunal's findings in the Partial Award, that:

> *"…the sole purpose of the 15 March 1999 letter was to support Dr. Zelezny in putting pressure on the foreign investor CME in order to achieve a re-arrangement of the contractual relations between CET 21 and CNTS as desired by Dr. Zelezny, an arrangement that would destroy the legal basis (the safety net) of the foreign investor's investment. There was no other purpose."*

306. The Respondent's view is that no findings of fact are made to establish the causal link between the letter and the harm suffered five months later. A detailed factual analysis of the chain of events linking the two still has to be undertaken in this quantum phase of the proceedings. CME presented no evidence of such links in the first phase of the proceedings; and the Czech Republic was in no position to disprove such links in the absence of any knowledge of matters internal to CNTS, CET 21, Dr. Zelezny, CME and of various other parties involved at the time.

307. The essence of the claim is that the Czech Republic assisted one side in a board-room battle; but the Czech Republic no more monitors the internal workings of commercial companies than does any other state. The Respondent further suggests that the mere fact of the writing of the letter March 15, 1999, even by a public body, would not be an unlawful act. The Partial Award finds, that this was a "*letter of the broadcasting regulator*"; but the Tribunal is also stating:

> *"On the face of it and quite obviously, the Media Council did not pursue any regulatory purpose with the letter".*

308. From this, it follows that the mere writing of the letter was not, and could not be, a breach of the Treaty, because it was not an act of the Czech Republic that altered the legal position of CME.

309. The Czech Republic accepts that if it was established that the Media Council's intention in writing the letter was to support Dr. Zelezny to put pressure on CME, that might be considered to be sufficient to establish a breach of the Treaty. The Tribunal still has to analyze the facts to determine precisely what losses flowed from this breach. That is an issue for this Quantum Phase of the Arbitration.

310. Further, in respect to causation the Respondent states that applying the Tribunal's finding that the purpose of the letter *"was to support Dr. Zelezny in putting pressure on the foreign investor CME",* no evidence has been adduced to show that CNTS would not have dismissed Dr. Zelezny if the letter had not been written.

311. The primary ground for dismissal was Dr. Zelezny's actions in transferring program acquisition for TV Nova from CNTS to AQS, further that CNTS issued an unlimited guarantee to the benefit of AQS; and, finally, that Dr. Zelezny made TV statements which were damaging to CNTS.

312. The Respondent's view is that CME had in fact been fully aware of Dr. Zelezny's activities in relation to AQS since the previous November. CME knew of Dr. Zelezny's March visit to the Media Council, of his drafting a letter for them to write and of his attempt to persuade the Media Council to re-open proceedings against CNTS.

313. The Respondent again analyzed the events around the Media Council's letter dated March 15, 1999, the results of this analysis being in sharp contrast to the Tribunal's findings in the Partial Award. The Respondent's position is that the Media Council did not collaborate with Dr. Zelezny and that the Media Council's letter did not cause any loss. The Partial Award at para. 539 and seq. extensively dealt with the March 1999 events. The Tribunal will address these subjects further in its analysis below.

314. The Respondent's view is that the March 15, 1999 letter played no part whatsoever in the battle which thereupon broke out between CME and CNTS and Dr. Zelezny/CET 21 throughout the early summer of 1999. The Respondent further referred to the London Tribunal's interpretation of the March 15, 1999 letter, which differs from the Tribunal's findings in these proceedings (see further the Tribunal's analysis below).

(5) Loss from 1996 Breach of Treaty (Respondent)

315. The Respondent's position is that CET 21's contribution to CNTS in 1993 (the exclusive right to use the license) as evidence by the Memorandum of Association of 1993 was (only) a promise to contribute the right to use the license. As the commercial court registered the Memorandum of Association it must be assumed that the contribution had actually been made. The Respondent's position is that the contribution was limited to the period of the license, it is twelve years or until 2005. If the license was renewed for further 12 years then CET 21 would have to make a new contribution. The respondent refers to Art. 14.2 of the 1993 MoA, which provided that "all members shall cause [CNTS] jointly to apply on a timely basis for the renewal of the license". The Respondent's interpretation is that this shows evidence that CME did not presume that the license would be renewed.

316. The respondent's position is that no change to CET 21's contribution took place in 1996 as Czech law would not permit CET 21 in CNTS to agree to change CET 21's contribution. The contribution was irrevocable. The Respondent's view is that disregarding the 1996 change of the MoA by replacing the exclusive right to use the license by the right to use the know-how of the license did not change CNTS' entitlement for exclusive use of the license. After the change of the contribution in 1996 CNTS continued to operate TV Nova in exactly the same manner. In support of its view Respondent submitted an expert opinion by Prof. Dedic.

317. In respect to the acts of coercion by the Media Council in 1996 forcing CNTS to change the MoA, the Respondent takes the position that the coercion as a consequence of Czech law was a legal nullity unless confirmed by the coerced party. Alternatively, it is the Respondent's position that CNTS never objected the 1996 change of the MoA or

even reserved its rights. Therefore, CNTS and its shareholders must be treated as having affirmed the new arrangements and therefore are estopped from seeking damages for any loss suffered as a result of the 1996 events.

318. The Respondent further supports its view that the status of CNTS as exclusive operator was secured by the new Art. 10.8 in the MoA, although qualified by the Tribunal in the Partial Award as being rather meaningless and worthless. The Respondent refers to the Czech law court proceedings where a decision will be made on the issue of the exclusivity and the validity of the Service Agreement. Should the Czech courts decide that CET 21 in 1999 was not entitled to terminate the Service Agreement, then CNTS/CME will have retained the legal protection of the Service Agreement.

(6) CME Media has already been compensated

319. Respondent's position is that CNTS had already been properly compensated in 1996 by replacing the contribution of the *"use of the licence"* by the *"use of know-how of the licence"* , which contribution had been valuated at the time at CZK 48 million, which is the same value as described to the original contribution in 1993.

(7) Termination of Service Agreement not foreseeable

320. In contrast to the Tribunal's findings in the Partial Award, the Respondent is of the opinion that the termination of the Service Agreement by CET 21 in 1999 and the financial consequences resulting there from were unforeseeable and not proximate consequences of the change in the MoA in 1996. It was not foreseeable that Dr. Zelezny breached his own obligations to CME Media and that CET 21 and CNTS established a separate program acquisition company AQS. It was not foreseeable that CNTS dismissed Dr. Zelezny as General Director of CNTS in April 1999 and that CET 21/Dr. Zelezny would terminate the Service Agreement.

(8) Loss from 1999 Breach of Treaty

321. According to the Respondent's position, CME became a qualifying investor in 1997. The Treaty breaches in 1999 must be considered separately from the 1996 breaches. The Respondent's view is that under Czech law, the Media Council can only act with legal effect by commencing formal administrative proceedings. This was not the case.

322. The Respondent's view is that the March 15, 1999 letter had no effect whatsoever on the exclusivity of the relationship between CET 21 and CNTS. For the March 15, 1999 to constitute a *"taking"* for the purpose of Article 5 of the Treaty, it would have to be a *"measure",* which was not the case. The harm to CME was caused by CET 21/Dr. Zelezny. The Media Council had no legal power to intervene in the dispute between Dr. Zelezny and CME. There was no Treaty violation by the Media Council, no losses flowed from any alleged violation and it is therefore not a basis for awarding compensation.

323. The Media Council did not commence administrative proceedings against CET 21 or CNTS in March 1999 or thereafter. CNTS retained the right vis-à-vis CET 21 to enjoy the economic benefit of the license in August 1999, and continues to do so today. The Service Agreement was entirely separate from the contribution already granted. The Media Council has no obligation to compensate CME for losses arising as a result of its failure, through CNTS, to enforce rights to which it continues to be entitled under Czech law.

324. Further, CME has been compensated for any loss suffered due to Dr. Zelezny's actions by the ICC Award. Further, the Respondent is of the opinion that Claimant suffered no loss due to the outcome of the Czech court proceedings. The Czech court ruled that the termination of the Service Agreement was invalid, and that CNTS remains entitled to be the exclusive service provider of TV Nova, CME will receive the remedy it originally sought in these proceedings.

325. CME lost its revenue stream, and the merger with SBS failed, only after CET 21 terminated the Service Agreement. CET withdrew from the Service Agreement in retaliation for the dismissal of Dr. Zelezny and for reasons connected with the SBS merger. This chain of events was not caused by or contributed to by the Media Council.

326. If CME's investment has been harmed as a foreseeable result of the Media Council's conduct in breach of the Treaty, the loss attributable is only that to which CME had definite legal rights. CME retains the shares in CNTS, which continue in existence with all such assets as it has decided to retain. All that has been lost is the dividend stream based on the profits of TV Nova. The rights which CME enjoyed depended on the existence of the license. The license expires in February 2005. It is entirely speculative for CME to claim that the Treaty violations harmed it beyond 2005.

327. The Respondent denied that the actions and inactions of the Media Council caused the proposed SBS merger between SBS and CME Ltd to be aborted. Any losses suffered by CME as a result of SBS deciding to pull out of the merger have nothing to do with the Media Council.

328. The Respondent's position is that the events of August 1999 would have occurred in any event without the breaches of the Media Council. Therefore, the losses that flowed from those events are not compensable. In any case the events of August 1999 were not foreseeable.

(9) Principles of Valuation

329. The Respondent's consideration of the applicable law will be dealt with in the Tribunal's analysis below. The same applies to the Respondent's submissions in respect to the methods of determining economic value of CNTS.

(10) Valuation of Alleged Losses (Respondent)

330. The Respondent points out that the reliance on CNTS and CME financial information according to internal communications in particular with the company's auditors Arthur Andersen is impaired by deficiencies in internal control. Therefore, the forecast prepared in February 1999 and relied upon by Dr. Copeland (Monitor) for the purposes of valuation cannot be relied upon, whereas the DCF analysis prepared by the Respondent proceeds from a basis that the financial information is accurate. In accordance with the Respondent's view that, for various reasons the 1996 breaches did not cause losses, the compensation in respect to these breaches should be nil. In respect to the losses caused by the breaches in 1999 the Respondent attributes the losses to the dispute with Dr. Zelezny, therefore, the compensation should be nil. Without prejudice to this position the Respondent is of the view that in accordance with the Czech Valuation Law the net book value for the valuation of CNTS must apply. Accordingly the loss to the Claimant is USD 11.8 million.

331. On the basis of a willing buyer / willing seller valuation the Respondent determines the value of CNTS on the basis of the closing traded market price of CME Ltd shares as of August 4, 1999, which was USD 6.69 per share. Based on 25.7 million shares the market capitalization of CME Ltd fell from USD 171,9 million to USD 115,7 million, a reduction of USD 56,2 million, being the consequence of a press release by CME, making public the interruption of the operations of CNTS. The measure of damage according to the Respondent is, therefore, capped by this amount of USD 56.2 million.

332. Alternatively, the Respondent submits that CME's compensation should be restricted to the net present value at August 5, 1999 of the expected dividends stream over the remaining life of CET 21's contribution of the license to CNTS (January 30, 2005). Therefore, CME's compensation should be limited to the net present value at August 5, 1999 of the dividends stream from 6 August 1999 to January 30, 2005 (a period of 66 months). For the purpose of this assessment of the loss to CME, it is assumed that the dividend paid in each year is equal to 100% of the *"free cash flows"* available for each year. The Czech Republic's experts, NM Rothschild, assess that the net present value of the free cash flow of CNTS for the period August 5, 1999 to January 30, 2005 is USD 113 million. The net present value of the dividend stream to CME is, therefore, USD 112 million.

1. DCF Valuation based on the changed relationship between CNTS and CET 21

333. Alternatively, CME's compensation should be assessed on the basis of a realistic prediction of the relationship that it might have enjoyed with CET 21 after January 30, 2005. The Media Council did not favour exclusive relationships between licensors and service companies, as reflected in the new Media Law which came into effect on 17 May 2001. When it came to renewal of the license, the Media Council would have been entitled to insist that CET 21 not have an exclusive relationship with any one service company. This would have resulted in CNTS losing the full economic benefit of the li-

cense, which would have had a significant downwards impact on the profitability of CNTS.

334. The Respondent submits that from the perspective of a valuation as at August 5, 1999 there are two possible methods which may be used to factor this risk and uncertainty into a DCF analysis. First, the cash flows after January 2005 could be adjusted downwards to reflect the reduced prospects of achieving the original projected cash flows. Second, the risk and uncertainty could be determined by an increase in the discount rate used.

335. The Respondent submits that a minimum reduction of between 25% and 50% should apply to the post January 2005 cash flows. On the basis of the DCF analysis undertaken by NM Rothschild, this results in a valuation of CNTS at August 5, 1999 of between USD 168 million and USD 223 million.

336. The loss to CME, based on 99% of these DCF valuations is between USD 166 million and USD 221 million.

337. Consistent with CME's methodology, it is necessary to deduct from the estimates of loss to CNTS the residual value of CNTS. As described below, the residual value at August 5, 1999 is USD 57.7 million, of which CNTS' share is USD 57.1 million. Deducting this figure from the 99% of the value of CNTS at August 5, 1999 results in a loss of between USD 108.9 million and USD 163.9 million.

2. DCF Valuation based on risk of Dr. Zelezny's non-participation

338. Alternatively, CME's compensation should be based on a DCF valuation that reflects the value attributable within the valuation solely to Dr. Zelezny. Any purchaser of CNTS would have attributed a significant element of the value to the continuing presence of Dr. Zelezny in the business.

339. All of CME's valuations assume that Dr. Zelezny would have continued for the foreseeable future in the management of CNTS, which would have benefited from his loyalty, experience and know-how. In part the *"value"* of CNTS dependents on the know-how and experience of Dr. Zelezny ("the Zelezny Factor").

340. One possible measure of the "Zelezny Factor" is the sum which the merged SBS/CME was apparently willing to pay Dr. Zelezny to resolve the "*uncertainty about CNTS' continued entitlement to all revenues from TV Nova".* CME itself stated that in March 1999 this amount comprises a minimum cash amount of USD 200 million together with a one-third interest in a merged CNTS – CET 21, *"worth a further USD 175-200 million".* That total value, on CME's own case, is that the "Zelezny Factor" amounted to between USD375 million to USD 400 million, representing between 67% and 71% of CME's valuation of CNTS of USD560 million. Subtracting the "Zelezny Factor" from CME's

own valuations results in a value for CNTS of between USD160 million and USD 185 million.

341. Applying the same range for the „Zelezny Factor“ of 67% to 71% to the DCF valuation prepared by NM Rothschild results in a valuation of between USD97 million and USD 111 million.

342. CME observe that the amounts of between USD 375 million and USD 400 million were not sufficient to “buy off” Dr. Zelezny, implying that the „Zelezny Factor“ was worth even more than this and the *“it turned out that no price of peace was sufficient… to stop CNTS’ destruction…”* CNTS was worth very little without Dr. Zelezny.

343. A further method of valuing the „Zelezny Factor“ would be to include the risk of Dr. Zelezny’s departure as an adjustment to the discount factor in the calculation of the net present value of the projected cash flows.

344. Consistent with CME’s methodology, it is necessary to deduct from these estimates of losses to CNTS, the residual value of CNTS of USD 57.7 million, which results in losses of between USD 149 and USD 208 million.

3. DCF valuation based on no change in relationship between CNTS and CET 21

345. The Respondent’s experts, NM Rothschild, have undertaken an analysis of the future cash flows of CNTS on the basis of the (unrealistic) assumption that there would never be any change in the economic relationship between CNTS and CET 21 and that the license is renewed on January 31, 2005 in perpetuity. In contrast to Dr. Copeland’s conclusion that a DCF analysis produces a net present value of at August 5, 1999 of USD 556 million, the analysis conducted by NM Rothschild indicates that the net present value is USD 335 million.

346. NM Rothschild have also benchmarked their DCF analysis against a proper review of trading multiples. NM Rothschild consider that a proper analysis of trading multiples results in a range of between USD 181 million and USD 324 million.

347. As explained in further detail below, the analysis prepared by Dr. Copeland has been prepared using unrealistic assumptions which do not fully take account of the inevitable reduction in CNTS’ market share and the cost increases that CNTS would face, as the Czech TV market faced increased competition and converged towards those prevailing in other European countries. NM Rothschild have carefully reviewed Dr. Copeland’s assumptions and substituted, as necessary, more appropriate and realistic parameters. The assumptions used by NM Rothschild are set out in detail in their report.

348. Consistent with CME’s methodology, it is necessary to deduct from the DCF valuation of CNTS the residual value of CNTS. As described at below, the residual value at August 5, 1999 is estimated by the Czech Republic at USD 57.7 million. Deducting the re-

sidual value from the value of CNTS at August 5, 1999 results in a loss to CME of USD 275 million.

4. CME's valuation in the Respondent's view is wrong

349. The Respondent submits that the basis for CME's assessment of damages is misconceived as a matter of law and, in any event, uses erroneous and highly improbable assumptions as to the profitability and cash flows of CNTS.

350. Respondent's view is that Claimant's four approaches to valuation which all (conveniently) *"triangulate"* around a figure of USD 560 million.

(a) That the valuations take into account future cash flows to perpetuity. The future cash flows of CNTS were contingent on the use of the license through the Service Agreement with CET 21. There was no guarantee of renewal of the license. The proper valuation of CNTS must exclude the cash flows generated after the expiry of the license on January 30, 2005.

(b) That the valuations assuming an unchanging relationship in the economic relationship between CNTS and CET 21 in perpetuity. This is contrary to the factual events in late 1998 and 1999, which would result in redistribution of the total profits between CET 21 and CNTS. Further, the Media Council would not have permitted exclusivity after the end of the license period at January 30, 2005, which would have diminished CNTS' profits thereafter.

(c) That the valuations ignore the fact that a significant part of the *"value"* of CNTS' business was dependent on the skills and know-how of Dr. Zelezny. The valuations of CNTS relied upon by CME all have the implicit assumption that Dr. Zelezny would continue to be a pivotal factor in the business for the foreseeable future. The *"genuine"* value of CNTS at August 5, 1999, must be decreased by the *"Zelezny Factor".*

(a) SBS' offer in 1999

351. CME contends that its investment in CNTS should be valued by reference to what a "*willing buyer*", SBS, "*thinks it was worth*." There is no basis for this view. The SBS offer in February 1999 of 0.725 SBS shares for each CME Ltd share is not an appropriate basis for determining the value of CNTS at August 5, 1999.

352. First, SBS' offer was for the share capital of CME Ltd, which included not only CNTS but CME Ltd's other extensive operations in Central and Eastern Europe. A significant proportion of the value of CME Ltd related to the non-CNTS assets.

353. Second, the offer which was "*on the table*" at August 5, 1999 was not the 0.725 SBS share offer but the revised offer of 0.5 SBS shares for each CME Ltd share. That offer represented a valuation of between USD 226 million and USD 296 million.

354. Third, any premium which SBS was willing to pay can only relate to factors extraneous to the "*genuine*" value of CNTS, such as synergies between SBS and CME Ltd and SBS' belief that it could achieve a greater return on the assets of CME Ltd than the existing management.

355. Fourth, SBS' offer was not a cash offer. CME Ltd shareholders were being offered shares in SBS, which were subject to fluctuation of the stock market. The purchase price for CNTS to be paid in SBS shares was over-inflated.

356. Fifth, there was no certainty that the transaction would have closed, given the regulatory issues and consents required for the transfer of licenses the transaction needed.

(b) Purchase of Dr. Zelezny's 5.8% share in CNTS (through Nova Consulting) in Au*gust 1997*

357. The purchase equates to an August 1997 valuation of CNTS of USD 492 million, which in the Respondent's view is no proper basis for evaluating CNTS. Not only did the transaction take place two years before the valuation date of August 5, 1999 but the payment for the purchase of the CME shares held by Nova Consulting was not an arms length transaction and is, therefore, not a reliable basis for a valuation. On July 18, 1997, James Cox, director of corporate planning at CME Ltd, reported that the implied value of the payment to Dr. Zelezny was significantly above the market value of CNTS. It was recognized by CME at the time that the payment was extremely high and represented a "*strategic*" value rather than the "*genuine*" value of the shares. James Cox stated that: *"…the market currently values Nova at between USD310 million and USD402 million*". In addition, James Cox referred to an IPO of CNTS shares, which was being contemplated at the time. He stated that: "*We would be lucky to get USD3 million per point*"; i.e. the value of CNTS if its shares were traded would be USD300 million.

(c) Dr. Copeland's (Monitor) DFC valuation

358. The Respondent refers to the report prepared by Dr. Copeland, and Monitor Company ("Monitor"), dated December 14, 1999. In that report, Dr. Copeland sets out three valuation methods to determine the value of CNTS at August 5, 1999, a DCF valuation, multiples valuations by reference to comparable companies and "*professional analyst*" valuations.

359. The Respondent states that there is no disagreement between the parties as to the fact that each of these methods are among "*the most common means by which buyers and sellers come to conclusions about company value*". However, such "*conclusions about company value*" are generally not undertaken in the context of determining the extent to which one party may or may not be liable for damages. Each of these valuation methods produces a total "*gross value*" for the shares of a company, and does not seek to apportion such value between the assets. A second step is, therefore, required in order to move from such "*gross value*" to a determination of the measure of loss

which may be attributable to the Czech Republic and other parties and factors over which the Czech Republic has no control.

360. Whilst the methodology used by Dr. Copeland to determine a DCF valuation is broadly unobjectionable in itself, Dr. Copeland has based his analysis upon a number of flawed assumptions which artificially increase the value of CNTS at August 5, 1999. For example, Dr. Copeland has extended cash flow projections prepared by CNTS in February 1999, which cover the period from 1999 to 2005, in order to prepare projections of his own for the period 2006 to 2008.

361. Dr. Copeland has also artificially increased his DCF valuation at August 5, 1999 by approximately USD11 million by including the value of cash flows from 1 January 1999 to August 4, 1999 within his analysis. CME is not entitled to receive the benefit of these cash flows.

362. A number of Dr. Copeland's "*new*" assumptions have a significant impact on the results of his DCF "*analysis*". For example:

(a) The CNTS projections assume that the Czech gross TV advertising market will grow by 12% in 2003, reducing to 10% in 2004 and 8% in 2005. Dr. Copeland, however, increases the growth rate to 8.7% in each of 2006, 2007 and 2008.

(b) The CNTS projections assume that CNTS' share of advertising revenue will fall by 2% per annum between 2000 and 2005. Dr. Copeland, however, assumes that there is no further fall between 2006 and 2008.

(c) Whilst the CNTS projections show an increase in the growth of net advertising expenditure (after discounts) in 2005 of 4.5%, Dr. Copeland assumes growth thereafter of 8.7% between 2006 and 2008.

363. Further, Dr. Copeland's analysis fails to take full account of the extent of future competition in the Czech market and of the probability that CNTS' profit margins, which have been historically high as a result of its "*first mover*" advantage in the market will gradually be eroded and will converge towards the more normal margins experienced by other European broadcasters. In particular, Dr Copeland's arbitrary assumption that ČNTS retains a 60% advertising share in perpetuity is untenable, given the experience of other European broadcasters. Further, programming expenses are a key element in determining the cost structure of a broadcaster. Dr Copeland has assumed that these costs comprise 31% of revenues by 2008. The European average for broadcasters similar to ČNTS is 49%. Whilst ČNTS had benefited from cheaper programming costs in its early days, these costs would have increased significantly as the market matured.

364. In Dr. Copeland's DCF analysis, no detailed cash flow projections are undertaken for years after 2008. Instead, Dr. Copeland assesses what is described as a "*continuing*"

or "*terminal*" value. This takes the cash flows in 2008 and assumes that these cash flows grow in perpetuity at a rate of 3% per annum (and are then discounted back to present value). Dr. Copeland's DCF valuation of ČNTS assumes that the terminal value of ČNTS is USD 313 million (56%) of the total value of USD 556 million. In other words, 56% of the value of ČNTS is derived from cash generated after the end of 2008. It is apparent that Dr. Copeland has used unrealistic assumptions in 2008 in order to "*multiply*" the impact of those assumptions in perpetuity and drive up the value of ČNTS.

365. Some USD 397 million (71)% of Dr. Copeland's DCF valuation is derived from cash flows generated after the end of the expiry of CET 21's license in January 2005. Accordingly, in the event that the Tribunal considers that it is appropriate to determine the value of ČNTS only to the end of the expiry period of the license, on Dr Copeland's own analysis, this would amount to USD 159 million.

(d) Dr Copeland's Trading Multiples Valuation

366. Dr Copeland also derives a valuation for ČNTS from what he describes as a "*trading multiples valuation*." Based on the average ratio in 1998 of enterprise value to EBITDA for what Dr. Copeland considers to be comparable companies, he determines that an average multiple of 10.6 times should apply to ČNTS' EBITDA for 1998. This purports to result in a valuation of ČNTS of USD582 million.

367. This valuation technique is "*flawed*" in that it simply relates to a "*snapshot*" at a moment in time which is "*backward-looking*". Further, Dr. Copeland's "*comparable*" businesses to ČNTS are all major Western European broadcasters, such as TF1, Carlton Group, Mediaset etc. Dr. Copeland has failed to recognize the fact that the capital markets simply do not value Central and Eastern European companies on the same trading multiples as established Western European broadcasters. CME has provided no evidence of the level of trading multiples for Central European companies that would apply to ČNTS as a "*stand alone*" business.

(e) Dr. Copeland's reliance on Analysts' Valuations

368. Dr. Copeland relies on a number of reports prepared between January 1997 and February 1999 by analysts employed by financial institutions which covered CME Ltd and concludes that these reports show an average valuation for ČNTS of USD 572 million.

369. The Respondent submits that the recent scandals surrounding the conflicts of interest between analysts and investment bankers working in the same firms demonstrates unequivocally that the analyst valuations cannot and should not be relied upon uncritically for an objective valuation of ČNTS. All of the banks which prepared analyst reports had recent fee-earning relationships with CME Ltd. All but one of the reports relied upon by Dr. Copeland referred to CME Ltd as a "*buy*" or "*strong buy*".

370. The Respondent submits that no reliance should be placed on the valuations derived by Dr. Copeland from analyst reports. Alternatively, substantial discount should be ap-

plied to the analyst reports relied upon by Dr. Copeland, of a minimum of 30% to take account of the upward bias in the reports.

371. Further, it is submitted that Dr. Copeland's use of reports dating back to January 1997 is flawed. A more robust method of calculation would be to use analyst reports in the 12 months to August 5, 1999 and to exclude the "*outliers*", i.e. the highest and lowest valuations. This results in an average value for 100% of ČNTS of USD507 million. Applying a 30% discount results in a valuation of USD 355 million.

(f) The Residual Value of CNTS

372. CME's assessment of the residual value of ČNTS in the amount of USD 27.5 million is based on the an ex-post facto determination of the residual value, i.e. on the value of assets "*that have been upstreamed since CET 21 cut off business dealings with it*" and "*the liquidatable value*" of ČNTS' remaining assets. The appropriate date for the determination of the residual value can only be August 5, 1999, consistent with the date of the valuation. The Czech Republic is not responsible for any losses incurred by CME subsequent to August 5, 1999 resulting from CME's subsequent conduct in administering the business. Similarly, the costs of liquidating assets and the winding up of the business cannot be held to be a cost to the Czech Republic as CME chose to continue to operate the business after August 5, 1999. These costs would, in any event, have been incurred at some point when the company ceases business.

373. The residual value at August 5, 1999 is substantially higher than the figure of USD 27.5 million. The accounts of CME as at 31 December 1999 show that the cost of the investment in ČNTS was USD 52,726,887 at both December 31,1998 and 1999. CME's accounting policy was to record investment at cost. No write down was made. At least USD 52,726,887 is the minimum residual value of CME's investment in ČNTS at August 5, 1999.

374. The Respondent further has the following observations:

(a) CME refers to the dividend payments of USD 19,127,000 made by ČNTS after August 5, 1999. The accounts at September 30, 2001 refer to a General Meeting of February 29, 2000 deciding to distribute dividends totalling USD 12.9 million and an additional declaration of dividends amounting to USD 12 million at the General Meeting on April 17, 2000. The total dividends declared after August 5, 1999, therefore, appear to amount to USD 24.9 million. This appears to USD 5.8 million higher than the figure referred to by CME. In addition, CME has received cash from the repayment of shareholder loans, which amounted to USD 2,758,000 in 2001.

(b) CME refers to the value of a building on Vladislavova Street having an appraised value of USD 9,481,000. This is inconsistent with a value of CZK 500 million (USD 13.3 million) referred to in the ČNTS accounts at September 30, 2001 de-

scribed as the value determined by "*an independent expert*". This would suggest that there may be a shortfall in CME's valuation of up to USD4 million. CME states that the value of used broadcasting equipment at September 30, 2001 is USD 1,084,000. In fact, the ČNTS accounts at December 31, 2001 indicate that the value is substantially more and is around USD 2,500,000 (excluding mobile equipment, in respect of which there is no evidence as to its valuation). Again, this suggest a minimum shortfall in CME's valuation of some USD 1.4 million.

(c) CME estimates that the total liquidation and maintenance costs will total USD 5,152,000, comprising USD 2,166,000 of the costs of operations from September 30, 2001 to December 31, 2002 and USD 2,896,000 in relation to the costs of selling the building and the remaining assets. No detailed breakdown of these costs has been provided by CME. The Respondent contends, however, that these costs are grossly exaggerated. For example, if as CME submits, the realisable assets comprise a building and broadcasting equipment with a value of USD10.6 million only, then the estimated selling costs amount to 27% of the value of those assets. It is inconceivable that the selling costs could be of this order. Similarly, it is difficult to imagine why the costs of operation during a 15 month period from October 1, 2001 to December 31, 2002 should amount to USD 2,166,000. A budget prepared for 2002 included salary and overhead costs totalling USD 736,000 only for 2002. If these annual costs were extrapolated for a 15 month period, the total cost would be USD 920,000.

(d) In assessing the residual value of ČNTS, CME has failed to include the realisation of value obtained by CME in relation to the termination of the Reorganisation Agreement dated March 29, 1999 between CME Ltd and SBS. A termination fee of USD 8.25 million was received by CME Ltd from SBS on September 28, 1999. ČNTS formed the major element of the value of CME Ltd, a significant proportion of the fee (60%) must relate to the value of ČNTS and, therefore, falls to be included within an assessment of residual value at August 5, 1999. On that basis, the element of the termination fee referable to ČNTS amounts is approximately USD 5 million.

375. Based on the above analysis, the Czech Republic contends that the residual value of ČNTS at August 5, 1999 is a minimum of USD 57.7 million, comprising the value of the investment in ČNTS shown in the accounts of CME of USD 52.7 million together with the apportionment of the termination fee of USD 5 million. In the alternative, the Czech Republic submits that the Tribunal should adjust CME's estimate significantly upwards in accordance with the above observations.

(g) Reduction to Claimant's Recovery

376. Yet CME in full knowledge of the Treaty breaches in 1996 increased thereafter its shareholding by 5.8% by acquiring the Nova Consulting shares. Further, CME Media in

full knowledge of the facts increased its shareholding by 27.2% after the breaches had occurred. CME is not entitled to compensation in respect of losses that occurred in relation to these increased shareholdings.

377. Mr. Lauder has a 26% economic interest in CME Ltd, which in turns owns 100% of CME. The Respondent's view is that the whole of CME's claim is inadmissible on the grounds of *res judicata*. The London Final Award binds Mr. Lauder. Thus, Mr. Lauder should not benefit from any compensation from the Czech Republic through CME when his claim for compensation under the US Treaty was rejected. Any compensation paid to CME should be further reduced by at least Mr. Lauder's ownership share of CME Ltd.

378. In cases of joint tortfeasors, Section 438 Czech Civil Code provides that the court may assess damages against each defendant taking account of their proportionate responsibility for causing the harm. The Respondent requests the Tribunal to do so. The proportion should take account of the relative benefit (if any) flowing to the joint tortfeasors from their conduct. Dr. Zelezný at CET 21 obtained full control and economic benefit from taking over TV Nova. The Czech Republic obtained nothing. It is submitted that the Czech Republic should not be liable for more than 10% of the harm caused to CME's investment in ČNTS.

379. The Tribunal should take account of the contributory fault of ČNTS/CME. In particular, the Tribunal should take account of the fact that ČNTS dismissed Dr Zelezný and thereby ruptured the relationship and then deliberately withheld the daily broadcast log on August 5, 1999. This provocation gave CET 21 an excuse to withdraw from the Service Agreement.

380. International law provides that a tribunal is entitled to take account of the economic situation of the respondent State. The Respondent requests the Tribunal to do so when deciding on the quantum.

(11) Interest (Respondent)

381. As a matter of Czech and international law, CME is only entitled to simple interest. Interest should be awarded only from the date of any final award on quantum. Respondent "acknowledged" in its Sur-Reply Respecting Quantum "that interest may be awarded from the date the principal sum should have been paid, i.e. the date of expropriation, not the date of the award of the quantum" (Sur-Reply, para. 293). However, as emphasized in the Statement of Defense, interest is only awarded where it is necessary to provide full reparation for the loss suffered by a wrongful act. CME is claiming compensation in USD. Any award of interest should be at a rate appropriate for that currency, which is U.S.Dollar-LIBOR.

382. According to Sec.517 Czech Civil Code compound interest can only be awarded where it has been expressly agreed to by the parties. Under international law interest is not a necessary element of compensation in every case.

383. In respect to compound interest the Respondent refers to the fact that in international arbitration compound interest is very much the exception and that the basis for distinguishing between whether simple or compound interest is to be awarded is the nature of the loss suffered and the method used to value that loss.

384. If the Tribunal applies an asset valuation method to which lost profits are added, such a valuation has already given the Claimant full reparation. The Claimant is only entitled to simple interest from the date of judgment until the date of payment of the compensation.

385. If the Tribunal applies a DCF method to value the loss of a business entity, this method gives the Claimant the value of its business at the date of expropriation. Simple interest may then be awarded from the date of expropriation.

386. If the Tribunal values property on the basis of asset valuation or net book value, without the addition of lost profits, the Claimant may be entitled to compound interest.

387. In the present case, CME is not entitled to compound interest; and any award of interest would depend upon the method of valuation adopted by the Tribunal.

388. In respect to the period Czech law provides that interest may be awarded from the time damages should have been paid. International law generally provides for interest to be awarded from the date when the principal sum should have been paid. ČNTS did not incur any loss (if any) until several months after August 5, 1999 as the SBS transaction gone ahead, would have occurred not before December 1999. If the expropriation had been carried out lawfully, it would no doubt have taken several months before the "*just compensation*" would have been assessed and agreed with ČNTS.

389. Accordingly, interest (if any) should only be awarded from the date of the Tribunal's Award on Quantum.

(12) Rate of Interest (Respondent)

390. CME's request for interest at a rate of 12.0% running from August 5, 1999 to the date of payment" is hugely exaggerated.

391. The Czech Civil Code (Art. 517) and government regulation (No. 142/1994 Coll.) provides that a default interest rate must be paid on judgments, which is double the discount rate set by the Czech National Bank. Under the Commercial Code, the default interest rate is such rate as agreed by the parties (Art. 369(1)). If there is no such agreement, then the default interest rate is that set out in the Civil Code (Art. 517). The current Czech National Bank's official discount rate is 2.75% (as from April 26, 2002).

The current default rate is, therefore, 5.5%. Whilst the discount rate on August 6, 1999 was 6%, the average rate for the period between August 6, 1999 and June 28, 2002 has been 4.8%.

392. CME claims that its "*own borrowing rates in the Czech Republic, … support application of the 12.0% statutory rate*." In support of this claim, CME asserts that it borrowed CZK 850 million from Czech Savings Bank (CSB) on August 1, 1996 to fund CME's purchase of the Czech Savings Bank's shares in ČNTS at a fixed rate of 12.9%, which arrangements were in place until October 2001, when the loan was re-negotiated. It was CME Media, and not CME, that borrowed that money. The loan was far from normal, as it was part of the share purchase transaction.

393. The commercial rates of interest prevailing in the Czech Republic are determined by the Czech National Bank and reflected in the Prague Interbank Offered Rates ("PRIBOR"). The appropriate benchmark for interest from August 6, 1999 should be PRIBOR. In the period from August 6, 1999 to 28 June 2002, the average 3-month PRIBOR rate has been 5.2%.

394. In respect to international law the rate of interest must also be determined in accordance with the overriding purpose of providing full reparation for CME's loss (but not more) as a result of the breach of the Treaty.

395. CME is at liberty under the Dutch Treaty to select the currency of the claim. CME selected US Dollars, which was the currency of its investment, and is the currency of CME's and CME Ltd's accounts. The interest on any damages awarded by the Tribunal should match the currency in which the claim has been made. Interest at the three-month U.S.Dollar-LIBOR over the period from August 5, 1999 to 28 June 2002 has been an average of 4.7%.

IV.
The Tribunal's Analysis

A. Introduction

(1) The Law Applicable to this Arbitration

396. In respect of the law applicable to the merits of this arbitration dispute, the Tribunal is bound by provisions of Article 8 (6) of the Treaty which provides:

> *"The arbitral tribunal shall decide on the basis of the law, **taking into account in particular though not exclusively**:*
> - *the law in force of the Contracting Party concerned:*
> - *the provisions of this Agreement, and other relevant Agreements between the Contracting Parties:*
> - *the general principles of international law. (Emphasis supplied.)*

397. Further Article 3 (5) applies.

> *"If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, **such rules shall to the extent that they are more favourable prevail over the present agreement**". (Emphasis supplied.)*

398. In respect to the applicable law the Respondent (also) refers to Art. 8.6 of the Treaty and the governance of the Common Position of The Netherlands and the Czech Republic, which in turn refers to Art. 8.6 of the Treaty. The Respondent refers in particular to the application of Czech law. The Respondent is of the view that the Tribunal must first apply Czech law to analyze any legal acts that have taken place in the Czech Republic and, in particular, the Tribunal must apply any Czech laws of mandatory nature. The Respondent refers to the legal opinion provided by Prof. Schreuer, who takes the approach that the Tribunal must take into account decisions of the Czech Courts. The last word on matters of Czech law is with the Czech Courts, notably the Supreme Court. Only after having examined the issues in the light of the final Court decisions is it, in the view of Prof. Schreuer, possible to check the result then reached for compliance with international law *"not until the Czech Courts have decided the issue we will know whether the change in the contractual arrangements deprived CME of the protection of its investment".* Prof. Schreuer is of the view that this requirement differs from that of an exhaustion of local remedies. (His view is not shared by the Tribunal).

399. In respect to international law, the Respondent's position is that international law only becomes applicable if there is a *"genuine gap"* in Czech Law and if the Czech law must be corrected as being inconsistent with international law.

400. The Tribunal's analysis is that the application of the four sources of law as provided for in Art. 8 (6) of the Treaty have no ranking according to the wording of the Treaty. The Common Position as agreed by the delegates of The Netherlands and the Czech Republic confirms this view with the qualification that international law governs in case of discrepancy among those sources. In the First Phase of this arbitration the parties exclusively based their arguments on the interpretation of the Treaty in the light of the principles of international law. The only expert on law acting for the Respondent at the First Phase was Prof. Lowe, who exclusively addressed international law arguments. Czech Law in substance was for the first time pleaded by the Respondent in the Quantum Phase in particular by submitting a legal opinion of Prof. Dedic. The Respondent further submitted a legal opinion of Prof. Schreuer in conjunction with presenting the contention that the Partial Award must be annulled, because the Tribunal did not apply the proper law. The Tribunal is of the view that any question of the annulment of the Partial Award must be dealt with by the Swedish Courts. The Tribunal therefore comments upon Prof. Schreuer's opinion only briefly.

401. A careful review of Prof. Schreuer's opinion reveals that Prof. Schreuer's views do not support the Respondent's position that the Tribunal did not apply the proper law in the Partial Award. Moreover, Prof. Schreuer's conclusions are not adequately supported by his citations, when closely read. Prof. Schreuer's conclusions are carefully drafted with reference to assumptions which are not in accord with the facts of this case.

402. In contrast to precedents cited by Prof. Schreuer, the choice-of- law clause in the (Dutch) Treaty is broad and grants to the Tribunal a discretion, without giving precedence to the systems of law referred to. Art. 8 (6) of the Treaty says:

> *"The Arbitral Tribunal shall **decide on the basis of the law**, taking into account in particular though not exclusively: …" (Emphasis supplied.)*

There is no ranking in the application of the national law of the host state, the Treaty provisions or the general principles of international law. Further there is no exclusivity in the application of these laws. Most of the precedents cited by Prof. Schreuer do not apply here, as in those cases the parties mostly did not agree on a choice- of- law clause. None of the precedents contained a choice of law clause similar to the clause in the Treaty, which instructs the Arbitral Tribunal to ***take into account*** (not: to apply) the above mentioned sources of law, in particular ***though not exclusively***. None of the treaty clauses cited by Prof. Schreuer mirror this broad choice of law clause. Most of them therefore are not relevant to this arbitration.

403. The basic mandate of the Treaty obligates the Tribunal to *"decide on the basis of law*", which is a self-explanatory confirmation of the basic principle of law to be applied in international arbitration according to which the arbitral tribunal is not allowed to decide *ex aequo et bono* without authorization by the parties (see Art. 33 (2) UNCITRAL Arbitration Rules and Art. 17 (3) ICC Arbitration Rules).

404. Prof. Schreuer confuses the application of the principles of international law with *ex aequo et bono* decisions. When read in their full context, the precedents cited by Prof. Schreuer do not sustain his contentions. In particular in the Klöckner v. Cameroon Case (decision on annulment, May 3, 1985, 2 ICSID Reports (1994)95), the ad hoc Committee deplored the absence of any authority for general principles of law and concluded that the award's reasoning was more like a simple reference to equity. The ad hoc Committee in particular criticized the absence of specific legal authority, which made it impossible to determine whether the proper law had been applied. By not demonstrating the existence of concrete rules, the Tribunal had not applied the proper law.

405. There is no reason to criticize Prof. Schreuer for citing the ad hoc Committee's view on this point, except that Prof. Schreuer in his opinion gives the dubious impression that only the reference to specific national law rules would prevent a tribunal's decision from being characterized as a decision *ex aequo et bono*. This impression, if intended by Prof. Schreuer, would contrast with the principles of international law as applied by numerous international arbitral tribunals for decades.

406. An arbitral tribunal's decision is rendered "on the basis of the law", if the award is based on well-recognized international law precedents as developed, e.g., by the International Court of Justice, or ICC or UNCITRAL tribunals, as cited by this Tribunal in the Partial Award.

407. The Tribunal in point of fact in its Partial Award addressed various issues under Czech law, which were, however, to a large extent not essential to the Tribunal's decision. The Tribunal, in particular, reviewed Dr. Barta's opinions related to the nullity of the 1993 legal structure of the Claimant's predecessor's investment (and rejected Dr. Barta's view). The Tribunal reviewed Prof. Lowe's legal position according to which the 1993 legal structure (in contrast to Dr. Barta's legal opinions) was valid, whereas only the implementation was unlawful. The Tribunal rejected this view (not supported by Prof. Lowe or the Respondent by a single reference to Czech law) as being in contrast to the Media Council's various legal opinions and statements delivered inter alia to the Media Committee of the Czech Parliament. The Tribunal further reviewed the Czech Civil Court decisions related to the termination of the Service Agreement between CET 21 and CNTS and decided that this civil law court case (between different parties) is not relevant for the Tribunal's decision in the Partial Award.

408. Most of the cases referred to by Prof. Schreuer are cases where the agreements between the parties did not contain any provision regarding the applicable law (*Benvenuti & Bonfant v. Congo; SOABI v. Senegal, LETCO v. Liberia; CDSE (Santa Elena) v. Costa Rica).*

409. Prof. Schreuer's reference to choice- of- law clauses in Bilateral Investment Treaties concern clauses significantly differently to the (Dutch) Treaty clause as explained

above. The cases cited by Prof. Schreuer in his chapter dealing with consequences of the non-application of the proper law refer to cases where, under the ICSID Convention, the respective tribunals either applied a different law from that agreed by the parties (AMCO v. Indonesia; MINE v. Guinea) or the tribunals, in the absence of a choice-of-law clause, applied general principles of law without reference to specific case law, which was qualified by the ad hoc Committee as *ex aequo et bono* decision (Klöckner v. Cameroon as cited above). A main shortcoming of the Tribunal's reasoning in the Klöckner case was its laxity in citing sources and its failure to rely on specific legal authority (Schreuer citing Schreuer, C. The ICSID Convention: A Commentary 950-954 (2001)).

410. Unpersuasively in the eyes of this Tribunal, and in contrast with the only decision cited by Prof. Schreuer, in this context, is his view that there is a strict inter-relationship of domestic and international law requiring an arbitral tribunal to follow a certain ranking when applying the law applicable to an investment treaty. Arguably, Prof. Schreuer refers to the holding of the International Court of Justice:

> *"Where the determination of a question of municipal law is essential to the Court's decision in a case, the Court will have to weigh the jurisprudence of the municipal courts…". (Case concerning Elettronica Sicula (ELSi) ICJ Reports 1989, page 47).*

411. The Tribunal questions whether this holding of the International Court of Justice applies to the choice- of- law clause of the (Dutch) Treaty, taking into consideration the broad wording of that clause. Even if the principle established by the International Court of Justice should apply, the Court made clear that that law should be weighed by the Court (or the tribunal) "where the determination of a question of municipal law is essential to the Court's decision". This does not mean that a tribunal is bound to research, find and apply national law which has not been argued or referred to by the parties and has not been identified by the parties or the Tribunal to be essential to the Tribunal's decision.

412. Even less persuasive is Prof. Schreuer's view to the effect that this Tribunal was required to withhold the issuance of the Partial Award until the Czech law courts had finally decided the dispute between CNTS and CET 21 (Schreuer's opinion para. 245). There is no authority for this remarkable conclusion. Implementing this position would mean injection into a choice- of- law clause a further requirement: the exhaustion of local remedies. His view conflicts with the Respondent's position as reflected in the Stockholm hearing by Prof. Lowe, who expressly acknowledged that under the (Dutch) Treaty there is no requirement for the exhaustion of local remedies.

413. This Tribunal has serious concerns about the policy implications of Prof. Schreuer's views. Arbitration under a bilateral investment treaty would involve a high risk, always being threatened by the Damocles' sword of annulment on the basis that local remedies had not been exhausted or domestic law had not been properly applied.

(2) Issues to be decided by the Final Award

414. The Respondent by disregarding the Tribunal's written and oral instructions that parties should limit their pleadings to the issue of Quantum decided to re-litigate the issue of liability by submitting extensive written and oral pleadings on this question. Substantial parts of these pleadings respecting liability have been summarized in this Final Award above for the record only. Essential parts of the Respondent's re-litigation narrative and legal presentations contrast with the Tribunal's findings in the Partial Award. Causation was the basic and fundamental subject of the First Phase of the parties' conflicting written and oral submissions, in particular, before and during the nine days of hearing from April 23, 2001 until May 2, 2001 in Stockholm.

415. The question whether the Media Council by its acts and omissions caused the Claimant's losses was the subject of witness interrogations and the parties' pleadings. All aspects of causation and liability were extensively expounded, questioned, reviewed and controverted between the parties and were the subjects of questions put by the Arbitrators. 1.750 pages of court reporters' transcript show that the parties at the First Phase of the proceedings dealt with nearly all factual and legal aspects of liability and, in particular, of causation.

416. In particular, the Respondent's narrative as part of its re-litigation of the Partial Award is to a large extent a repetition of the Respondent's submissions made in the First Phase of these proceedings. It omitted basic elements essential for the Tribunal's findings in the Partial Award, such as the Media Council's and its chairman's extensive statements, presentations or opinions, reflected in the Media Council's minutes of meetings, internal papers and, in particular, in its communication with the Czech Parliament and/or the Parliament's Media Committee.

417. The Tribunal based its findings in the Partial Award predominantly on dozens of documents, in particular, on the Media Council's own characterization of facts and law transmitted to the Czech Parliament, its own letters, written communications and minutes of the meetings or (legal) opinions.

418. In the Respondent's narrative these important documents simply do not exist or are misinterpreted. The Media Council's July 23, 1996 letter, which initiated administrative proceedings against CNTS for alleged broadcasting without authorization, and the Media Council's March 15, 1999 letter were only two documents in a stream of internal and external communications originated by or related to the Media Council's regulatory activities (or non-activities) affecting CNTS and its relation to CET 21.

419. The Respondent's narrative places these documents out of context by isolating them from related documents and by simply misinterpreting their wording. For example, the Media Council's letter of July 23, 1996 (initiating administrative proceedings) was a cornerstone of the Media Council's acts of coercion in 1996. It clearly referred to al-

leged illegal broadcasting by CNTS based on the CNTS Memorandum of Association (MoA).

420. That Memorandum of Association secured CNTS' exclusive right of use of the broadcasting license (Partial Award para. 485 through 538). The Respondent's summary of the July 23, 1996 letter makes no mention of this basic issue, which however was clarified by the chairman of the Media Council, Mr. Josefik, when he appeared in Stockholm as a witness, and which was further extensively elaborated by the Respondent's counsel, Prof. Lowe. It was the subject of questions of the Tribunal at Day 9 (page 66 of outprint) of the Stockholm hearing.

421. The Respondent's characterization of the March 15, 1999 letter is in equally marked contrast with the Tribunal's findings in the Partial Award. The Respondent in its treatment of this letter missed one of the key issues of this arbitration, the interference as found by the Tribunal of the Media Council with the exclusive right of CNTS to use the broadcasting license, which interference was object of the March 15, 1999 letter by the Media Council and which (unlawful) interference the Tribunal extensively dealt with in the Partial Award.

422. The Respondent's narrative does not refute the Tribunal's findings, according to which the Media Council coerced CME into giving up its legal protection of the exclusiveness of the use of the broadcasting license in 1996 and breached the Treaty by the 1999 events (see below).

B. The Partial Award is binding

423. The Tribunal decided in the Partial Award, inter alia, as follows: "The Respondent is obligated to remedy the injury that Claimant suffered as a result of Respondent's violation of the Treaty by payment of the fair market value of Claimant's investment as it was before consummation of the Respondent's breach of Treaty in 1999 in an amount to be determined at a second phase of this arbitration." (Para. 624)

424. The Tribunal's considered conclusion is that the Partial Award is binding upon the Tribunal and the parties.

425. The Tribunal takes note of the Tribunal's explicit decision in para. 624 (4) of the Partial Award. This "*Partial Award is final and binding in respect to the issues decided herein*". Further the Tribunal recalls to the terms of Art. 8 (7) of the Treaty, according to which the Arbitral Award "shall be final and binding". The UNCITRAL-Rules similarly provide that the Final Award of a Tribunal is "final and binding" (UNCITRAL-Rules, Art.32 (2)). Consistently with this rule, no provision of the Treaty or the UNCITRAL-Rules provides any mechanism for appeal, re-hearing or revision of an arbitral award unless by way of interpretation or correction within a time period of 30 days or by appeal to the Swedish

Courts within the bounds of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Tribunal itself is not authorized to reconsider its Partial Award and, in any event, the Tribunal finds no good reason to do so.

C. The London Tribunal's Award does not control this arbitration

1. Respondent refused coordination of the two arbitral proceedings

426. The Respondent, in the First Phase of these proceedings, expressly and repeatedly refused any coordination of the London Arbitration and this arbitration. At the procedural hearing on November 17, 2000 the issue of coordination of the two proceedings was examined on the basis of Claimant's letter to the Tribunal dated November 10, 2000, which communicated to the Tribunal the Parties' Joint Agenda for the procedural hearing and the Claimant's proposals for coordination.

427. At the hearing the Respondent declined anew to accept any of the Claimant's alternative proposals, which were recapitulated in the Claimant's letter to the Tribunal of November 10, 2000, under the heading "Coordination of this proceeding with Lauder v. the Czech Republic": (i) to have the two arbitrations consolidated into a single proceeding (ii), to have the same three arbitrators appointed for both proceedings, (iii) to accept the Claimant's nomination in this proceeding of the same arbitrator that Mr. Lauder nominated in the London proceeding (iv) to agree that the parties to this arbitration are bound by the London Tribunal's determination as to whether there has been a Treaty breach, (v) that after the submission of the parties' respective reply memorials and witness statements in this arbitration, the hearing be postponed until after the issuance of an award in the London Arbitration.

428. By letter November 15, 2000 the Respondent wrote to the Tribunal:

> *"We refer to Debevoise & Plimpton's faxed letter of November 10 and the joint proposed agenda. We comment below on those matters where we disagree with the Claimant.*
>
> *1. Co-ordination of CME proceedings with Lauder arbitration.*
>
> *As noted by Debevoise & Plimpton, the Czech Republic does not agree to the consolidation of the CME and the Lauder arbitrations, and does not agree to be bound in the CME arbitration by determinations of the Lauder Tribunal. If Mr. Lauder and CME are concerned by duplicative proceedings, clearly the proper course for them to take would be to discontinue the Lauder proceedings. Mr. Lauder provides no explanation as to why he is unwilling to do so. This is inexplicable given that his explanation for bringing the CME proceedings is that that "a damage award (and other potential forms of remedy) to Mr. Lauder would not fully compensate all of CME's shareholders for the harms CME has claimed" (Debevoise letter, 10, November) and that an award in favour of Mr. Lauder "would not, however, make CME itself whole" (Statement of Claim, para. 77). It is respectfully submitted that the continuation of separate proceedings both by CME and Mr. Lauder – who purports to have voting control over CME – amounts to an abuse of the bilateral investment treaty regime.*

> *The Czech Republic opposes CME's application that the substantive hearing in this arbitration be postponed until the Lauder Tribunal has issued its award.*
>
> *The Czech Republic does not consider it appropriate that claims brought by different claimants under separate Treaties (which give rise to obligations of the Czech Republic to two different sovereign States – the United States and the Netherlands – under international law) should be effectively consolidated and* ***the Czech Republic asserts the right that each action be determined independently and promptly.*** *(Emphasis supplied.)*

429. By letter dated November 10, 2000, the Respondent already had stated that it would "*not agree to be bound in the CME arbitration by determinations of the US Tribunal".*

430. The Tribunal's conclusion is that if the London Arbitration Award arguably would have had any *res judicata* effect on this arbitration, the Respondent waived that defense by refusing to accept any of the Claimant's proposals to coordinate the two proceedings.

2. The Respondent explicitly waived lis pendens or res judicata defences

431. As stated in the Partial Award the Respondent expressly and impliedly waived any lis pendens or res judicata defence. The Tribunal decided this question in the Partial Award in passing upon its jurisdiction pursuant to UNCITRAL-Rule Art. 21(3). The Respondent in its pleadings expressly stated that it is not seeking to rely upon technical doctrines of lis ali pendens or res judicata. It invoked the argument of "abuse of process" by Mr. Lauder for initiating two parallel proceedings, which argument was dealt with and rejected by the Tribunal in the Partial Award (paragraphs 412, 419).

3. Res judicata does not apply in substance

432. The Tribunal further is of the view that the principle of res judicata does not apply in favour of the London Arbitration for more than one reason. The parties in the London Arbitration differ from the parties in this arbitration. Mr. Lauder is the controlling shareholder of CME Media Ltd, whereas in this arbitration a Dutch holding company being part of the CME Media Ltd Group is the Claimant. The two arbitrations are based on differing bilateral investment treaties, which grant comparable investment protection, which, however, is not identical. Both arbitrations deal with the Media Council's interference with the same investment in the Czech Republic. However, the Tribunal cannot judge whether the facts submitted to the two tribunals for decision are identical and it may well be that facts and circumstances presented to this Tribunal have been presented quite differently to the London Tribunal.

433. Because the two bilateral investment treaties create rights that are not in all respects exactly the same, different claims are necessarily formulated. As an international tribunal recognized, "the application of international law rules on interpretation of treaties to identical or similar provisions of different treaties may not yield the same results, having regard to, inter alia, differences in the respective contexts, objects and purposes, subsequent practice of parties and *travaux préparatoires". The Mox Plant Case (Ireland v. United Kingdom).* Request for Provisional Measures, ITLOS, Case No. 10, December 3, 2001, § 51.

434. This Tribunal decided this issue with binding effect in the Partial Award (Partial Award 419). This holding of the Tribunal is supported by the London Tribunal's findings, according to which the Respondent's recourse in the London Arbitration to the principle of lis alibi pendens was held to be of no use, since all the other court and arbitration proceedings involved different parties and different causes of actions. The London Tribunal considered the risk that the two Tribunals may decide differently. It identified the risk that damages could be concurrently granted by more than one court or arbitral tribunal, in which case the amount of damages granted by the second deciding court or arbitral tribunal could take this fact into consideration when addressing the final damage (London Award para. 171-172, 174). It did not see an issue in differing decisions, which is a normal fact of forensic life, when different parties litigate the same dispute (which is not necessarily the case in all respects in this arbitration).

435. The principle of res judicata requires, for the "same" dispute, identical parties, the same subject matter and the same cause of action. This is accepted by international tribunals. Moreover, the fact that one tribunal is competent to resolve the dispute brought before it does not necessarily affect the authority of another tribunal, constituted under a different agreement, to resolve a dispute - even if it were the "same" dispute. *Certain German Interests in Polish Upper Silesia, Jurisdiction* (1925) P.C.I.J., Series A, No. 6, at 20 (PCIJ jurisdiction not barred by the existence of separate proceeding); *American Bottle Company (US v. Mexico, April 2, 1929),* 4 R.I.A.A. 435, 437 (submission to another tribunal of identical dispute between same parties has no effect on tribunal's jurisdiction); *SSP (ME) Ltd. v. Egypt* (First Decision on Jurisdiction Nov 27, 1985), 106 I.L.R. 502, 529.

436. Only in exceptional cases, in particular in competition law, have tribunals or law courts accepted a concept of a "single economic entity", which allows discounting of the separate legal existences of the shareholder and the company, mostly, to allow the joining of a parent of a subsidiary to an arbitration. Also a "company group" theory is not generally accepted in international arbitration (although promoted by prominent authorities) and there are no precedents of which this Tribunal is aware for its general acceptance. In this arbitration the situation is even less compelling. Mr. Lauder, although apparently controlling CME Media Ltd., the Claimant's ultimate parent company, is not the majority shareholder of the company and the cause of action in each proceeding was based on different bilateral investment treaties. This conclusion accords with established international law (*Barcelona Traction Case* (Belgium v. Spain) Second Phase, I.C.J. Rep. 1970, 3, 48-50, §§95-100, *Holiday Inns S.A. et al. v. Morocco,* in P.Lalive, The First World Bank Arbitration – Some Legal Problems, I ICSID Reports 645, 664, (1993)).

4. "Common Position" in respect to res judicata

437. The agreed minutes of the Common Position of the Netherlands and the Czech Republic, adopted in pursuance of the consultation procedure under Art. 9 of the Treaty, support the Tribunal's view that the London Award does not govern this arbitration. Accord-

ing to the agreed minutes, at p. 3, the Netherlands position is that *"Claims of different legal entities, even though they may be controlled by the same economic entity, are not necessarily the same claims and difference in legal personality has been recognized by tribunals (see, e.g. the ICJ Barcelona traction case). For instance, subsidiaries can operate rather independently from the parent company".* In conclusion, the Tribunal is of the view that, even disregarding the Respondent's waiver in respect to lis pendens and res judicata, the principle of res judicata cannot apply in relation to the London Award.

D. The Respondent's further arguments for Relitigation of Liability (Tribunal exceeding its mandate / Bifurcation)

438. The Respondent's contention that the Tribunal must relitigate certain areas of liability as a consequence of the Tribunal having exceeded its mandate in its decision in the Partial Award due to a (limited) bifurcation of the arbitral proceedings is unsustainable. The scope of the First Phase of the proceedings and the Quantum Phase were clearly defined by the parties' joint proposal recounted in the Claimant's letter of November 10, 2000, to the Tribunal. In this agreed wording the parties stated:

> "if the determination of a Quantum of monetary damages is necessary – e.g. because the arbitral tribunal orders a [the] remedy referred to in para. 111 or para. 112 of Claimant's Statement of Claim – that Quantum should be established in further proceedings, so that the briefs and witness statements will not deal with the amount of monetary damages."

439. Para. 111 of the Claimant's Statement of Claim as referred to has, inter alia, the following wording:

> "The Quantum of damages should take into account, among other factors, the fair market value of Claimant's investment prior to the Czech Republic's treaty violations, the value of the investment after restoration of CNTS' rights and the loss of revenues or other harm that has resulted from the treaty violations. (Emphasis supplied.)

440. Further, in para. 112 of the Claimant's Statement of Claim, the Claimant requested (in the event that restoration were not granted) that the Tribunal

> "should award damages to Claimant for the full amount of the losses and harms Claimant has suffered as a result of the Treaty violations. Those losses are in excess of $ 500 million. Claimant respectfully proposes in the interest of efficiency, that its proof respecting the amount of monetary damages to which Claimant is entitled be reserved, pending the Tribunal's issue of an award of the merits and on Claimant's entitlement to the various forms of relief requested." (Emphasis supplied.)

441. This relief sought by the Claimant did not differ throughout the First Phase of the proceedings. It was confirmed by Claimant at the Tribunal's request in writing during Day 9 of the Stockholm hearing on May 2, 2001. The receipt of the hand out was confirmed by the Chairman ("…the Tribunal will make an award as requested in both of your

submissions, which you handed over to us in writing") and was recorded for the minutes by the court reporters (print out on page 178 of Day 9).

The relief sought by the Claimant was, inter alia, as follows:

> "2. Declaring that Respondent is obliged to remedy the injury that Claimant suffered as a result of Respondent's violations of the Treaty by payment of the fair market value of Claimant's investment in an amount to be determined at a second phase of this arbitration."

442. The corresponding relief sought by the Czech Republic was handed over simultaneously:

> *"(3) And/or CME's claim be dismissed and/or CME is not entitled to damages, on grounds that the alleged injury to CME's investment was not the direct and foreseeable result of any violation of the Treaty".*

443. The form of relief sought by the Claimant was neither opposed by the Respondent at the hearing nor by the post-hearing briefs. The only comment the Respondent made was that the requested form of relief was "*futile*". Any other comment by the Respondent would have contrasted with the parties' joint definition of the two phases of the arbitration as expressed in the Claimant's November 10, 1999 letter and in the hearings and submissions by the parties in the First Phase of this arbitration in which the parties discussed aspects of liability without reservation or limitation.

444. The Respondent's view that the Tribunal exceeded its mandate by deciding that the appropriate form of relief is the fair market value of the investment in CNTS is unsustainable in the light of the parties' instructions to the Tribunal to decide on the Claimant's request for compensation of the fair market value of its investment, leaving open for the Quantum Phase "only the amount of monetary damages".

445. The Tribunal cannot identify any other aspect of liability open for re-litigation, under the heading of "exceeding the Tribunal's mandate" or "bifurcation".

E. Tribunal's observations related to Respondent's attempt to relitigate causation

(a) General Comments

446. Causation was the most exhaustively litigated issue in the First Phase of these proceedings, being addressed in every pleading (*see* Notice of Arbitration § 33; Phase I Statement of Claim §§ 5-8; 55-66; 103-105; Phase I Statement of Defense §§ 172-179; 289; 297-299; Phase I Reply §§11; 64-68; Sur-Reply §§43-44), in oral arguments at the hearing (*e.g.*, Stockholm, Day 1, 174:3-8; Stockholm, Day 8, 57:18-62:21, 68:21-71:9; 123:8-14; 182:2-183:24 and 221:21-223:23; Stockholm, Day 9, 38:9-39:10; 98:9-100:12), and again in the post-hearing briefs (*see* Written Closing Submissions of the Czech Republic §§70-72; 79-105; CME Post-Hearing Brief §§ 44-60).

447. Respondent's attempt to relitigate causation is, therefore, unacceptable. The Tribunal quite clearly addressed causation in the Partial Award para. 527, 575-585 and decided upon it. Neither Respondent's exposition on the international law of joint tortfeasors nor its diverse efforts to include arguments under new labels (such as contribution and mitigation) can change the fact that these points all relate to the previously answered question of its responsibility for all of Claimant's loss. This applies to the new (and unsustainable) arguments advanced by the Respondent that Claimant never lost the 1993 contribution of the use of the license. Moreover the "joint tortfeaser issue" does not affect the Respondent's Czech Republic's responsibility for CME's loss. The Tribunal has held that "a State may be held responsible for injury to an alien investor where it is not the sole cause of the injury." Partial Award, para. 580.

(b) Respondent's argument on "joint tortfeasers" is unsustainable

448. Respondent's discussion of the Tribunal's analogy to joint tortfeasors in the Partial Award is based on a significant misinterpretation of the Partial Award. The Tribunal held that the Respondent is liable for injuries caused by actions and inactions of the Media Council attributable to the Czech Republic. *See e.g.*, Partial Award, para. 427 ("The Czech Republic violated the Treaty by actions and inactions of the Media Council which led to the complete collapse of the Claimant's and the Claimant's predecessor's investment in the Czech Republic").

449. The Tribunal's findings in the Partial Award are that the Media Council collaborated with Dr. Zelezny and supported Dr. Zelezny's unconcealed and expressly stated aim "to harm" CNTS by removing CNTS as exclusive provider of broadcasting services for CET 21. That support of Dr. Zelezny was in breach of the Treaty. To what extent Dr. Zelezny breached his own duties or the law was not to be decided by this Tribunal. The legal and factual impact of the Media Council's regulatory letter of March 15, 1999 was

evidenced by the communications between CNTS / CME and the Media Council and other related events between March and August 1999.

450. Prof. Schreuer's argument under the heading "Joint Tortfeasors" in his Opinion (para. 255 et seq.) is unsustainable in fact and law. Prof. Schreuer dealt with the question of whether the conduct of CET 21 or that of Dr. Zelezny may be attributed to the Respondent. That question is not in dispute in this arbitration. The Tribunal's findings in the Partial Award, reconfirmed in the Quantum Phase by new documents (in particular the April 27, 1999 Media Council's minutes of meeting discussed below) were that the Media Council by its actions in 1996 undermined the Claimant's legal protection for its investment in the Czech Republic (at that point of time Dr. Zelezny not being in an adverse position to CNTS) and that the Media Council by its actions and inactions in 1999 in collaboration with Dr. Zelezny destroyed Claimant's investment. The Tribunal based the Award on the Media Council's actions and inactions and not on Dr. Zelezny's actions. Dr. Schreuer's "Conclusions on Joint-Tortfeasors" on page 89 of his opinion, therefore, do not correspond to the facts of the case.

451. Further, Dr. Schreuer based his legal opinion on the Respondent's position that the chain of causation was interrupted by Claimant's or by CNTS' own acts, in particular by the dismissal of Dr. Zelezny as General Manager of CNTS. Therefore, in the view of Prof. Schreuer, the conduct of the Czech Republic "is not proximate cause for the damage allegedly suffered by CME". This Tribunal found otherwise. The chain of causation was not interrupted due to the fact that the Media Council by its own actions and inactions as regulator of the Czech Republic put Dr. Zelezny in the position to terminate the Service Agreement between CET 21 and CNTS.

452. Prof. Schreuer's further views on State responsibility under the perspective of the general international law of State responsibility (Prof. Schreuer's Legal Opinion, para.297/298) are unpersuasive. The Tribunal held in the Partial Award that the Respondent (as a consequence of the Media Council's breaches of the Treaty by supporting Dr. Zelezny) is liable under the Treaty. The Tribunal's position is consistent with Art. 438 (1) Czech Civil Code, according to which tort-feasors are jointly and separately liable. Only for good reasons may a court decide that someone who caused the damage shall be liable only in respect to the damage caused by him personally (Art. 438 (2) Czech Civil Code). This does not apply here as the Media Council, according to the Tribunal's findings, by its actions in 1996 and 1999 undermined CNTS' exclusivity of the use of the broadcasting license, which exclusivity was the main protection for the Claimant's investment in the Czech Republic. Therefore, Prof. Schreuer's opinion fails not only with respect to the underlying facts but with respect to the rules of law. His analysis is inconsistent with the general principles of international law found by the Tribunal as well as the Czech Civil Code.

(c) The chain of events March – August 1999 contrasts with Respondent's narrative

453. The Tribunal's findings in the Partial Award are further supported by documents which were submitted or re-submitted by the Respondent in the Quantum Phase.

454. Mr. Klinkhammer in his written presentation to the Media Council on April 27, 1999, which is now available, complained about the Media Council's interference, referring in particular to Dr. Zelezny's letter to the Media Council of March 3, 1999 and to the Media Council's response of March 15, 1999:

> *"The Chairman of the Council complied relatively quickly with his [Dr. Zelezny's] request. We [CME/CNTS] believe that the change of the existing conditions led to* ***a partial confiscation of CME's investments without compensation****." (Emphasis supplied.)*

455. Mr. Klinkhammer further referred to the contemplated merger between CME and CET 21 *"which will, however, reflect the conditions valid at the time of CME's entry into the market"; "CME will cooperate with the Czech Authorities and CET 21 members in their effort to improve the not very well structured relation between the broadcast license and Television company; the Siamese Twins, CME will, however, seek your understanding and support in order to achieve a mutually agreeable settlement which will reflect not only the wishes of CET 21 members, but also it will respect management responsibilities of CME's towards its shareholders in line with agreements on mutual* ***protection of investments*** *concluded by the Czech Government with many countries."* This latter statement was made by CME's lawyer Martin Radvan, who had joined the meeting in support of CME.

456. The printout of the Media Council's tape taken at the hearing on April 27, 1999, submitted by Respondent in the Quantum Phase as document RQ 527, confirms Mr. Radvan's statement on behalf of CME in respect to Dr. Zelezny's letter to the Media Council of March 3, 1999 and the Media Council's letter of March 15, 1999, stating that the adoption of the Media Council's views of the business relationship might involve "***partial confiscation*** *or an interference with ownership rights that would require assessment on the basis of international treaties, concluded by the Czech Republic. We firmly believe that this will not be the case and, therefore, beg the Council to exercise its influence and try to affect the participants to this business dispute for the proposed merger of the two companies to be based on such business grounds to avoid division of the existing structures*."

457. The printout of the tapes of April 27, 1999, which did not come to the Tribunal's attention in the First Phase (although it might have been submitted within the huge quantity of documents) and which was not pleaded by the parties in the First Phase, discloses that Dr. Zelezny on the same day without the CNTS/CME representatives being present gave a more than an hour long presentation (12 small print pages of the tape recording outprint) which further supports the Tribunal's findings in the Partial Award.

458. Dr. Zelezny's revealing statements in front of the members of the Media Council speak for themselves. His characterization of the 1996 amendment of CNTS MoA and the implementation of the Service Agreement was as follows:

> *"At the same time there was another process going on which we watched with fluster and disconcertion, that especially since 1996, 1997, when administrative procedures was stopped based on a contract that be registered by you [Media Council] and inserted into your file, which has a non-exclusive character and which does not stipulate the scopes of cooperation and which defines some other principles that you set down as conditions to stop the administration procedure, ……"*

459. After accusing CME having "exploited millions" from CNTS because they took away almost the whole yield of advertisement, Dr. Zelezny stated: *"I want to mention a business event that took place during subsequent steps and that is to say that after the use of licence was withdrawn and after covering this gap in the investment via so-called know-how that we covered up, our partners decided to invite … [there] follows a description of the Nova Consulting deal]. (Page 14 of the April 27, 1999 tape recording outprint).*

460. Pages 21 through 23 recorded Dr. Zelezny developing his strategy in respect to securing finance for new technology and a service base when replacing CNTS as service provider, referring to "interesting offers for investments", stating that "*it would not be any problem to build a new Nova, the only difference is that when we developed Nova six years ago, we were younger….."*

461. In respect to producer companies he stated that "*CET 21 could order directly, not CNTS, this is no problem*". A dialogue developed between Dr. Zelezny and the Chairman of the Media Council, Mr. Josefik, on the "performance of the license" revealed:

> *"Zelezny: I want to assure you Mr. Chairman, that performing the licence is not endangered in our opinion. No danger is expected that we would interrupt broadcasting for a period longer than 30 days, we do not expect any interruption of broadcasting at all and at present we are being assured by the other party that they are interested in providing good-quality services and if it is so, we will not break this structure. However, we reserve the right that to be sure that the licensed subject will not be blackmailed due to a certain exclusive position of CME and you warned us about this danger three or four years ago, to build a parallel production base, which will focus on production so it will not endanger activities provided by CNTS, nevertheless, it will be possible to convert this production base into full-value television including dispatching, the dispatching workplace and some other supporting services to make it into a television. It is a safeguard against the case that services provided by CNTS would fail, would not be professional, good-quality or would be sabotaged."*

> *"Josefik: I have quite a principal comment. All these processes are developing in time to a considerable extent, all of us know the history of the effort of the Council to make the relations between the licence holder and other organisations completely transparent. Within the concluded administrative holder and other organizations completely transparent. Within the concluded administrative proceedings about unauthorized broadcasting of CNTS some changes were made that are proved on contractual basis here and at the last meeting with the Council we agreed that if some current changes of the structure that made it possible to stop the administrative proceedings had occurred, we would like to have the contracts in their updated form."*

462. By this the chairman of the Media Council referred to the administrative proceedings about unauthorized broadcasting of CNTS and he referred as well to the last meeting between Dr. Zelezny and the Media Council on March 2, 1999. He asked for the (new) contracts in their updated form. Dr. Zelezny answered that he could not yet agree with CNTS on the changes.

463. From this it becomes clear that the Media Council's letter of March 15, 1999 was not just simply a policy letter. It was a regulatory letter which requested further changes of the contractual relation between CNTS and CET 21. Otherwise, the dialogue between Mr. Josefik and Dr. Zelezny would have had no meaning. Dr. Zelezny wanted to remove CNTS' exclusivity and the dialogue between Dr. Zelezny and the Media Council confirms that the Media Council supported Dr. Zelezny in the realization of this objective.

464. Moreover the Media Council was informed that, in case of non-agreement between Dr. Zelezny and CME, Dr. Zelezny had prepared the replacement of CNTS as exclusive service provider by other providers, the financing and organization of which was already in train and openly discussed between Dr. Zelezny and the Media Council. By this exchange the Media Council collaborated with Dr. Zelezny's scheme not only tacitly but in express terms.

465. These documents submitted by the Respondent show that the further deterioration of CNTS position as exclusive service provider occurred with the full awareness of the Media Council. CET 21's lawyer gave a clear statement on exclusivity by his letter to CNTS dated June 7, 1999 in which he stated:

> *"Furthermore, I would like to know what has led you to a conclusion of exclusivity of relationship between my client [CET 21] and your company, if such exclusivity has not been established by an agreement and it is just my client's sole discretion, whether he will require the services of your company or not".*

466. CNTS and CET 21 copied their correspondence to the Media Council. By letter of June 9, 1999 the Media Council instructed CNTS to abstain from broadcasting:

> *"Re: Opinion of the Council of CR for Radio and Television Broadcasting regarding an attempted unauthorized broadcasting on the part of CNTS, spol. s.r.o.*
> *Prague, June 9, 1999*
> *In our 11th session on June 8-9, 1999, the Council of CR for Radio and Television Broadcasting concluded that in the case of the "Call the Director" show on Saturday 5, 1999, there was an attempt to broadcast without authorization on the part of CNTS, spol. s.r.o. We also remind you of the Appeal of the Council as of May 27, 1999, reference no. 1446/99. Should such situation occur again on the part of CNTS, the Council will start relevant administrative procedures.*
> *Enclosed we send you a statement of the Council of CR for Radio and Television Broadcasting published on June 9, 1999,*
> *Yours sincerely,*
> *Josef Josefik*
> *Chairman of the Council"*

467. By letter dated 24 June 1999, which was dealt with by the Tribunal in the Partial Award, CNTS requested the Media Council to intervene in the dispute with CET 21. CNTS gave a description of the legal history of the contribution of the exclusive use of license to CNTS since 1993, the events in 1996 and pointed out that Dr. Zelezny was acting precisely in contradiction to the agreed legal structure between CNTS and CET 21 on the operation of the license, which structure was implemented in consultation with the Council in 1996. CNTS requested:

> *"We would like to kindly ask you, as a public administration body, participating by its decisions in establishing of the legal structure of relationships between CET21, CNTS and CME in 1993 and having a decisive influence on modification of this legal structure and some of its significant conditions in 1996-1997, to give your position, or possibly to take measures which would resolve the current dispute between CET21, CNTS and CME in connection with the legal structure of these relationships and prevent their violation on the part of CET 21 and Ph.Dr. Vladimir Zelezny."*

468. CNTS repeated this request by letter dated July 13, 1999 to the Media Council, asking again for a evaluation of the exclusivity of the relationship between CET 21 and CNTS. In this letter CNTS explained its legal position in detail in respect to exclusivity of its position as service provider to the license holder CET 21. According to public information, the Media Council was preparing an opinion for the Permanent Media Commission of the Parliament of the Czech Republic on the exclusivity of the relationship between CET 21 and CNTS. CNTS' letter ended with the request:

> *"We hope the above specified facts (which represents the basic, however not the complete inventory of arguments) will help to evaluate the legal relationship between CNTS and CET 21 is an exclusive relationship which was as such established, construed, and, up until the creation of the dispute with Dr. Zelezny, as such respected by all participated physical and legal entities and by concrete legal acts was being fulfilled."*

469. By letter dated July 26, 1999, the Media Council informed CNTS about its opinion on exclusivity submitted to the Permanent Commission for Media of the Czech Parliament and requested CNTS to stop immediately media campaigning "in connection with the trade dispute".

470. CNTS by letter of July 29, 1999 responded to the Media Council, stating that the Media Council was

> *"basically an advisor in constructing and creating of arrangements between CET 21 and CEDC, CNTS. Therefore, we presume that the Council has a real obligation towards the sides concerned and towards state as well to participate in finding a solution and not to take standpoint that it regards exclusively commercial dispute".*

471. This letter was sent to all members of the Media Council and the chairman of the Permanent Commission for Media of the Czech Parliament, Mr. Ivan Langer (who also had attended the Media Council hearing of April 27, 1999 dealt with above).

472. On July 29, 1999 the Media Council rejected CNTS application to reopen the proceedings against itself (CNTS) for unlicensed broadcasting. By this negative response, CNTS' efforts failed in its attempt to enter into dialogue or administrative proceeding to have its exclusive position as service provider of CET 21 confirmed by the broadcasting regulator.

473. By letter August 2, 1999, CNTS raised the matter of exclusivity with the Permanent Media Committee of the Parliament of the Czech Republic. CNTS stated its deep disappointment "*by the view expressed by the Council on the exclusivity of the relationship between CET 21 and CNTS in connection with the television broadcasting of TV Nova".*

474. CNTS criticized the Media Council's view that the dispute was of a commercial nature and that, therefore, there was no reason or right for the Council to intervene, and further stated: "*the Council avoids acknowledging their responsibility for creating the conditions, which have let to the present dispute between CNTS and CET 21".* CNTS repeated the history of the broadcasting license for TV Nova and the implementation of the legal relationship between CNTS and CET 21. CNTS expressly characterized the Media Council's involvements in favour of Dr. Zelezny as follows:

> *"during its active involvement in the relationship between CNTS and CET 21, the Council has taken certain actions which seem to indicate a bias on the part of the Council in favor of Dr. Zelezny and CET 21 in a manner contrary to the provisions of the bilateral investment treaties between the Czech Republic and The Netherlands and the United States of America, respectively. Furthermore, should the Council or any other Czech governmental entity make any ruling or issue any statement contrary to the interest of CME and CNTS, it is likely that such ruling or statement would violate the protections afforded by such treaties".*

475. CNTS finished this letter to the Czech Parliament as follows:

> *"Dear ladies and gentlemen, members of the Committee, we hope that you will understand that we feel compelled to provide you with our concerns on the actions of the Council in connection with the relationship between CNTS CET 21. For almost seven years we have made large investments in the Czech Republic, and now those investments are being seriously threatened by the actions of Dr. Zelezny with the complicity of the Council. We hope, that in the light of the convincing arguments and facts set forth in Exhibit C attached hereto, you will, within your authority, take the position that the relationship between CNTS and CET 21 has been, and should remain exclusive and that the Council, through its actions, has demonstrated an inability to act in accordance with law and in an impartial manner. Should you feel that it would be helpful, we would welcome the opportunity to meet with you to discuss the issues raised in this letter at your convenience".*

476. The Media Council and the Czech Parliament remained silent. They did not protect CNTS' position, nor did the Media Council renounce its position expressed in its letter of March 15, 1999, which the Media Council had given to the press in May 1999, after rumours had circulated in the Czech Republic that the Media Council was collaborating with Dr. Zelezny (Press release issued by the Media Council on May 11, 1999).

477. The Respondent's narrative in support of its request to re-litigate causation in the Quantum Phase made no mention of the foregoing facts and circumstances, nor did it provide any new facts or circumstances that could lead the Tribunal to revisit its reasons set out in the Partial Award.

(d) Mr. Klinkhammer's ICC witness statements

478. The Respondent in its argument in the Quantum Phase referred to Mr. Klinkhammer's witness statements and differences between his witness statements in this arbitration and the ICC arbitration. The Tribunal considered these differences carefully. Mr. Klinkhammer's witness statement in respect to his presentation to the Media Council on April 27, 1999 turned out to be correct once the respective hand-outs and the out-print of the audio-tapes came to the attention of the Tribunal in the Quantum Phase. These two documents reinforce the Tribunal's view, in support of the Tribunal's findings in the Partial Award, that CNTS strongly objected to the Media Council's regulatory letter of March 15, 1999 and, more than that, that the Media Council collaborated with Dr. Zelezny unhesitatingly in the realization of his scheme to oust CNTS.

479. In respect to Mr. Klinkhammer's witness statements concerning the role of Dr. Zelezny in vitiating CME's investment by replacing CNTS as exclusive service provider for CET 21, Mr. Klinkhammer's statements to a large extent are interpretations of undisputed facts, mostly documents, which have been reviewed by the Tribunal with all due care. It is, in particular, undisputed that Dr. Zelezny was the driving force in destroying CME's investment by removing CNTS as exclusive service provider. The Media Council played its part by its support of Dr. Zelezny, by actions and inactions, which allowed Dr. Zelezny to remove CNTS from its position as exclusive service provider, and which culminated in the termination of the Service Agreement on August 5, 1999.

480. This is also shown by the April 27, 1999 hearing of the Media Counsel, when Dr. Zelezny developed his scenario to dismantle CNTS' position as exclusive service provider. The Media Council's action and inactions, hearing out Dr. Zelezny's scheme without a word of disapproval, characterizing the regulatory issue of exclusivity as a commercial matter and denying opening administrative proceedings to clarify the legal position between CNTS and CET 21, cannot be viewed other than as support of Dr. Zelezny in his actions to deprive the foreign investor of its investment.

F. Respondent's Request for Re-litigation of the Partial Award on the basis of "Mitigation" or "Contributory Fault"

481. The Respondent argues that CME in firing Dr. Zelezny and by withholding from CET 21 the daily broadcasting log for August 4, 1999 caused the destruction of CNTS' position as exclusive service provider. This position has no merit. Without the Media Council's support of Dr. Zelezny in denying the exclusiveness of CNTS' position as service pro-

vider, Dr. Zelezny would not have been in the position to replace CNTS' broadcasting services for CET 21 by other providers. Instead of meeting its regulatory responsibility, the Media Council decided to cloak its collaboration by speaking of not getting involved in a "commercial dispute", although CNTS expressly requested the opening of administrative proceedings to clarify the legal situation of exclusiveness, which was the main legal protection of CME's investment in the Czech Republic. All this has been exhaustingly litigated by the parties in the First Phase and dealt with by the Tribunal in the Partial Award.

482. The argument of "mitigation" is equally unfounded One of the established general principles in arbitral case law is the duty of the party to mitigate its losses (Fouchard, Gaillard, Goldmann – International Commercial Arbitration para. 1491 with further citations). As shown by the Tribunal above, CME and CNTS did their utmost to overcome the consequences of the Media Council's actions and inactions, even by applying for initiation of administrative proceedings against CNTS or addressing the Czech Parliament. All these attempts failed.

483. The Tribunal could not identify any deficiencies of CME or CNTS in mitigating losses. Not dismissing Dr. Zelezny, as suggested by the Respondent, would have been extraordinary, in view of Dr. Zelezny's profound breach of his duties as general director of CNTS. The Claimant or CNTS did not cause the damage. They are, therefore, not liable under Art.441 of the Czech Civil Code for the injury incurred. The same applies to the alleged failure to deliver one daily broadcasting log (for August 4, 1999), which was (finally) characterized by the Czech Civil Courts as not sufficient to give good cause for CET 21 to terminate the Service Agreement.

G. No Re-litigation on the basis of new legal arguments (opinion Prof. Dedic)

(a) 1996 MoA amendments void

484. In the Quantum Phase, the Respondent presented the novel argument that Claimant did not suffer any harm from the 1996 amendment of the MoA as CNTS still has "the right of the contribution made by CET 21 in 1993, which remains the basis of CNTS' business". The Respondent's new argument, not made by the Media Council in the years 1996/1999, or by counsel for the Respondent in the First Phase of these proceedings, that the 1996 coerced modifications to Claimant's legal rights are void as a matter of Czech law, is unpersuasive in respect to the facts and the law.

485. CNTS shareholders (coerced by the Media Council) mutually agreed to lift the legal protection of the exclusive right to use the license by removing this protection from the MoA and transforming it into the Service Agreement. The right to use the license was still in place ,however, without the legal protection of the MoA.

486. Moreover, as a matter of law, Czech Law does not support Respondent's contention. Professor Dedic has founded his argument on Art. 37 of the Czech Civil Code, a general provision that an act is invalid if not taken freely, whereas Art. 49 of the Civil Code is a specific statute addressing the effects of coercion under Czech law. While Respondent does refer to Art. 49 its characterization of this section as stating that "the consequences of coercion are a legal nullity, unless affirmed by the coerced party" is contradicted by the statute's plain language, which provides only for the voidability of a coerced act – not its invalidity. Civil Code Art. 49 says: "A party that has entered into agreement under duress citing conspicuously disadvantageous conditions has a right to withdraw from such agreement". Moreover, Art. 49 is legally inapplicable to the MoA and the Cooperation Agreement. The Czech Commercial Code specifically excludes the possibility of claiming invalidity on the grounds of coercion. See Czech Commercial Code Art. 267(2). "The provisions of Art. 49 of the Civil Code shall not apply to the relationships governed by this Code".

(b) Prof. Dedic legal opinion vs. Dr. Barta's opinion

487. The Respondent's latter-day view of the nullity of the 1996 change of MoA (with the proposition that the Claimant was never expropriated having available the legal protection of the 1993 contribution of the use of license) puts CME into a rather kafkaesque contrast to the Media Council's own legal position taken versus the Claimant in the negotiations of the 1996 amendments.

488. In 1996 the Media Council enforced the removal of the exclusive right of use of the broadcasting license from CNTS' MoA with the support of Dr. Barta's legal opinion, according to which the contribution of the use of the license by CET 21 to CNTS in 1993 was illegal and void, having been in fact a transfer of the broadcasting license itself. The Media Council in 1996 in its above cited letter of July 23, 1996 announcing the initiation of administrative proceedings against CET 21 for illegal broadcasting referred to Dr. Barta's opinion. At the Stockholm hearing the Respondent, in particular, by the pleadings of Prof. Lowe, took the position that not the legal structure but the implementation of the broadcasting services by CNTS were in breach of the Media Law. Therefore, the (enforced) changes of the MoA in 1996 were necessary (and legal). Now, the Respondent takes the view that the amendments enforced by the Media council in 1996 are void. This change of the legal position of the host State towards the foreign investor is in the eyes of this Tribunal unacceptable and cannot be given credence or effect. It cannot be easily reconciled with the principle that a party cannot be heard to deny that which it has previously affirmed and on which the other party has acted in reliance.

H. The Quantum is unaffected by Czech Court Proceedings

489. The Czech Court proceedings have not yet provided any relief to Claimant and CNTS' prospects of receiving compensation in Czech courts appear to be dim. The City Court

of Prague's recent decision to deny CNTS protection under the Service Agreement due to uncertainty and unenforceability of CNTS' claims is difficult to understand, putting CNTS into the situation that no civil court protection seems to be available against the unlawful acts of Dr. Zelezny and CET 21, despite the ruling by the Czech Supreme Court that the termination of the Service Agreement was unlawful. The Claimant having gained no relief from these civil court proceedings against Dr. Zelezny and his company CET 21 at all, there appears to be no danger of double attribution of damages by this Tribunal. The Czech civil courts may or may not consider payments made by the Respondent as a consequence of this Final Award, when deciding on the dispute between CNTS and CET 21.

V.
The fair market value of CNTS as of August 5, 1999

A. The "fair market value" is "just compensation" representing the "genuine value"

490. Respondent argues that the "fair market value" to be granted to Claimant in accordance with the Partial Award is more than "just compensation" representing "the genuine value" granted by the Treaty.

491. In its Partial Award the Tribunal decided that:

> *"The Respondent is obligated to remedy the injury that Claimant suffered as a result of Respondent's violations of the Treaty by payment of the **fair market value** of Claimant's investment as it was before consummation of the Respondent's breach of treaty in 1999 […]". (Emphasis supplied.)*

492. Respondent's contentions contravening the Tribunal's decision in the first Phase with respect to the standard of compensation fail. The Tribunal awarded damages on the basis of the fair market value of Claimant's investment as it was before consummation of the Respondent's breach of Treaty on August 5, 1999. This date is in accordance with Art. 443 of the Czech Civil Code, according to which the assessment of the amount of damage shall be based on the value at the point of time when the damage occurred. It is in accordance with customary international law, with the provisions of bilateral investment treaties, and with the holdings of tribunals applying international law.

493. The Tribunal did not adjudicate the compensation of the "fair market value" on theoretical grounds (as extensively explored by the Respondent), but on the basis of the "fair market value " reflecting the facts and circumstances at the given point of time. In the view of the Tribunal, "fair market value" equates with "just compensation" that represents the "genuine value" of the property affected. This view of the Tribunal is supported by (i) the parties' conduct in the First Phase of the arbitration and (ii) by the law.

(1) Claimant's Relief Sought was the express object of the First Phase

494. By granting compensation on the basis of the "fair market value" the Tribunal afforded the relief sought by Claimant from the outset of this arbitration (already dealt with above under the heading whether the Tribunal in the Partial Award exceeded its mandate, see above III. D.). In the First Phase of the proceedings Claimant requested the Tribunal to declare :

> *"[..] that Respondent is obliged to remedy the injury that Claimant suffered as a result of Respondent's violation of the Treaty by payment of the "fair market value" of Claimant's investment […]."*

495. As found by the Tribunal above, the Respondent during the entire span of those proceedings did not contest Claimant's seeking relief through monetary compensation by payment of the "fair market value" of the investment.

(2) Treaty wording covers fair market value compensation

496. The assessment of compensation on the basis of the "fair market value" is sustained by the terms of the Treaty and its interpretation in accordance with Art. 31 of the Vienna Convention on the Law of Treaties. The Treaty at issue in these proceedings provides in Art. 5:

> *"Neither contracting Party shall take any measure depriving, directly or indirectly, investors of the other contracting Party of their investments unless the following conditions are complied with:*
>
> *[…] c. The measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investment affected […]"*

497. The requirement of compensation to be "just" and representative of the "genuine value of the investment affected" evokes the famous Hull Formula, which provided for the payment of prompt, adequate and effective compensation for the taking of foreign owned property. That formula was controversial. Capital exporting countries viewed it as an expression of customary international law. Developing countries and the Communist States maintained that the foreign investor was entitled to no more compensation than provided by the law of the host government however and whenever amended and applied. The controversy came to a head with the adoption by the General Assembly of the United Nations of the "Charter of Economic Rights and Duties of States." The major capital exporting States voted against the Charter. But in the end, the international community put aside this controversy, surmounting it by the conclusion of more than 2200 bilateral (and a few multilateral) investment treaties. Today these treaties are truly universal in their reach and essential provisions. They concordantly provide for payment of "just compensation", representing the "genuine" or "fair market" value of the property taken. Some treaties provide for prompt, adequate and effective compensation amounting to the market value of the investment expropriated immediately before the expropriation or before the intention to embark thereon become public

knowledge. Others provide that compensation shall represent the equivalent of the investment affected. These concordant provisions are variations on an agreed, essential theme, namely, that when a State takes foreign property, full compensation must be paid.

498. The possibility of payment of compensation determined by the law of the host State or by the circumstances of the host State has disappeared from contemporary international law as it is expressed in investment treaties in such extraordinary numbers, and with such concordant provisions, as to have reshaped the body of customary international law itself. (See, I.F.I. Shihata, *Legal Treatment of Foreign investment, "The World Bank Guidelines" (1993), pp. 85-95*) and Andreas F. Lowenfeld, *International Economic Law (2002), p. 493.)*

499. As the NAFTA Award of October 11, 2002 put in *Mondev International Ltd. V. United States of America, ICSID Case No. ARB (AF)99/2…"…the vast number of bilateral and regional investment treaties (more than 2000) almost uniformly provide for fair and equitable treatment of foreign investments, and largely provide for full security and protection of investments. Investment treaties run between North and South, and East and West, and between States in these spheres inter se. On a remarkably widespread basis, States have repeatedly obliged themselves to accord foreign investment such treatment. In the Tribunal's view, such a body of concordant practice will necessarily have influenced the content of rules governing the treatment of foreign investment in current international law."* (at para. 117). *"…current international law, whose content is shaped by the conclusion of more than two thousand bilateral investment treaties and many treaties of friendship and commerce…"* (at para. 125).

500. The determination of compensation under the Treaty between the Netherlands and the Czech Republic on basis of the "fair market value" finds further support in "the most favored nation" provision of Art. 3 (5) of the Treaty. That paragraph specifies that if the obligations under national law of either party in addition to the present Treaty contain rules, whether general or specific, entitling investments by investors of the other party to a treatment more favourable than provided by the present Treaty, "such rules to the extent that they are more favourable prevail over the present Agreement." The bilateral investment treaty between the United States of America and the Czech Republic provides that compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken (see also Maffezini vs. The Kingdom of Spain, ICSID case no. ARB/97/7; decision on jurisdiction Jan.25, 2000; Vol. 16 no. 1, ICSID Review - Foreign Investment Law Journal 2001). The Czech Republic therefore is obligated to provide no less than "fair market value" to Claimant in respect of its investment, should (in contrast to this Tribunal's opinion) "just compensation" representing the "genuine value" be interpreted to be less than "fair market value".

(3) "Just" Compensation under International Law Standards

501. International Law requires that compensation eliminates the consequences of the wrongful act. The Articles adopted by the United Nations International Law Commission on the Responsibility of States for Internationally Wrongful Acts provide for the "obligation to compensate for the damage caused", and specify that that compensation "shall cover any financially assessable damage including loss of profits…" (Art. 36). Paragraph 22 of the Commission's Commentary on its Articles states that: "Compensation reflecting the capital value of property taken or destroyed as the result an internationally wrongful act is generally assessed on the basis of the 'fair market value' of the property lost." (As reprinted in James Crawford, *The International Law Commission's Articles on State Responsibility, Introduction, Text and Commentaries, 2002, pp. 218, 225.)*. The World Bank Guidelines on the Treatment of Foreign Direct Investment specify that compensation will generally be deemed "appropriate" if it is adequate, effective and paid without undue delay and provide that (op. Cit., p.407):

> *"Compensation will be deemed "adequate" if it is based on the **fair market value** of the taken asset." (Emphasis supplied.)*

502. The determination of the compensation on the basis of the "fair market value" - to eliminate the consequences of the wrongful act for which the State is responsible - is acknowledged in international arbitration (see also Compania del Desarrollo de Santa Elena vs. Republic of Costa Rica, Case No. ARB/96/1, ICSID Award of the Tribunal, February 17, 2000; see, in related regard, Factory at Chorzow, Merits, 1928, P.C.I.J., Series A, No. 17, p. 47.).

(4) Just Compensation under Czech Law

503. Czech Law which contrary to Respondent's contention would only govern in the case of a more favourable treatment (see also Art. 3 (5) of the Treaty), also refers to international law for the determination of compensation. However, even in domestic disputes Czech Law provides for compensation comprising the "fair market value".

504. Respondent's reference to Czech Law (in order to diminish the quantum of compensation) disregards the Treaty provisions in Art 3 (5) and the Agreed Minutes, which confirm that the international law standard prevail in case of contradiction between international law and national law.

505. In any event, Czech law itself excludes its applicability in proceedings based on *"International Agreements (treaties, conventions) binding on the Czech Republic*" (Art. 25 (3) Czech Commercial Code). The Treaty is an international agreement within the meaning of Art. 25 (3) Czech Commercial Code. Art. 25 (3) Czech Commercial Code, therefore, excludes its applicability for valuation and determination of Quantum.

506. Respondent's reference to Art. 23 of the Valuation Act providing only for payment of book value fails (regardless of whether the scope of application is given by the reference in the footnote of Art. 1 (1) Valuation Act to Decree 122/1984 which refers to

"*pozemko*" - to be translated as "property", as Respondent alleges or as "plots of land" according to Claimant's translation). Art. 34 of the Valuation Act excludes the applicability of this act to disputes under investment treaties that are binding on the Czech Republic:

> *"The provisions of this Act shall apply to cases of expropriation unless provided otherwise in international investment protection agreements that are binding on the Czech Republic."*

507. Thereby Czech Law stipulates the primacy of the Treaty. A renvoi to the Valuation Act is excluded as the Czech law does not provide for the Claimant a more favourable treatment (Art. 3 (5) of the Treaty) as shown above.

B. Fair market value compensation

508. The Respondent must compensate the Claimant for its loss incurred by the destruction of the Claimant's investment in the Czech Republic in accordance with the Partial Award rendered by this Tribunal on September 13, 2001, which provides for payment the fair market value of Claimant's investment as it was before consummation of the Respondents breach of Treaty in 1999.

509. August 5, 1999 is the decisive date for establishing the fair market value of CNTS, as the destruction of Claimant's investment (enabled by the actions and inactions of the Media Council) materialized on August 5, 1999, when CET 21 under the control of Dr. Zelezny terminated the Service Agreement between CNTS/CET 21 for (alleged) good cause, which had the effect that the business operations of CNTS became idle within a few days.

510. The Claimant claims to have established the fair market value of its investment, CNTS, by various methods of valuation evaluating CNTS at USD 560 million as of August 5, 1999.

511. The Tribunal has concluded, after having assessed these valuations and the Respondent's arguments and expert opinions, that the fair market value of 100% of CNTS as of August 5, 1999 was USD 400 million. This valuation derives from the Claimant's and the Respondent's assessments after having taken into account all the facts and circumstances of the case, as submitted by the parties, their experts and witnesses.

512. This amount must be reduced by a special risk factor related to the "Zelezny Factor" in the amount of USD 72 million, taking into account the (negative) impact and influence of Claimant's local business partner Dr. Zelezny on the value of the Claimant's investment in the Czech Republic.

513. The value of CNTS so calculated must be adjusted by deducting the residual value of CNTS assets, which remained after the destruction of the business took place. Fur-

thermore, the compensation to be awarded must reduce Claimant's shareholding in CNTS pursuant to the ICC arbitral award between CME Media and Dr. Zelezny that provided CME Media with a refund of the purchase price of the NOVA Consulting shares in consideration for CME returning to Dr. Zelezny a 5.8% share in CNTS, which according to the Claimant's relief sought in this arbitration constructively reduced Claimant's shareholding in CNTS to 93,2%, the basis for compensation granted to Claimant by this Final Award.

C. The SBS Analysis

(1) The February 19, 1999 Analysis (SBS)

514. The Tribunal's view is that the SBS transaction entered into between CME Media Ltd and SBS gives an objective view of the fair market value of CNTS in February/March 1999 by a third party purchaser on the basis of arms-length negotiations. At the February 19, 1999 SBS board meeting SBS management submitted an analysis of CME Media Ltd including CNTS (NOVA). This analysis was based on a valuation of the CME broadcasting business (all CME stations) and a due diligence report prepared by Mr. Knight and Mr. Stogel (SBS management). In this report SBS assessed the implied value of CME Media Ltd (fully diluted) at USD 687 Million (81% CNTS share assumed). SBS based its sensitivity analysis on CME management budget numbers. The following NOVA projected net-spot revenues were assumed (USD million):

1998	1999	2000	2001	2002	2003
102,2	107,8	112,5	117,7	118,7	128,0

These projections by SBS were largely in accord with NOVA management forecast of February 17, 1999 (Exhibit CQ11, page 5 compared with Exhibit CQ147, page 1):

1998	1999	2000	2001	2002	2003
102,1	96,0	104,6	109,2	116,4	126,1

The EBITDA projections used by SBS for CNTS (NOVA) station operating cash flow (STOCF) were as follows (Exhibit CQ147, page 3):

1997	1998	1999	2000	2001	2002	2003
49,9	51,1	48,2	48,6	52,3	54,2	56,1

These assumptions were largely consistent with the management forecast of February 17, 1999 (CQ11, page 5):

1997	1998	1999	2000	2001	2002	2003
49,9	54,9	47,8	50,5	49,6	54,9	63,1

515. In a separate TV NOVA analysis (Exhibit CQ32) Mr. Knight made an assessment of the NOVA enterprise value at 99% attributable STOCF of USD 471,755 million. Mr. Knight used a 9.1 trade multiple by using 80% of SBS' implied multiple on 2001 STOCF (based on a USD 35-SBS-share price). On February 19, 1999 the SBS-stock price was 27.375 (Exhibit CQ149, Exhibit A).

516. Mr. Stogel in his February 17, 1999 memorandum to the board of directors of SBS gave a detailed valuation analysis of CME with a proposed exchange ratio of 0,725 CME-share for 1 SBS-share, based on the implied enterprise value for CME of USD 687,1 million (total CME). The analysis was prepared by Mr. Knight and Mr. Stogel and showed detailed calculations made by SBS to assess the CME value on the basis of various alternative assumptions. According to Mr. Knight's memorandum the valuation was based on SBS analysis of CME's 1999 station level budgets and its station level 5-year-plans. It was further based on SBS investigations of the individual markets and due diligence sessions with the CME senior and station level operating management. SBS had scrutinized the budgets and plans by adjusting CME's projections for market growth, advertising market share, exchange rates and to some extent operating expenses. The intrinsic share-value of SBS of USD 35 per share was based on Wall Street analysts estimates (which was USD 7,5 above traded share price). SBS further assumed *"that as a higher risk, Eastern European Operator, CME's private market multiples would be at a 15-25% discount to the corresponding SBS multiples".*

517. Using these discounted multiples, SBS calculated the implied CME private market net asset values and expressed those values at the range of prices per CME-share based on a fully diluted share count. Further, SBS calculated CNTS (NOVA) with a shareholding of 81% instead of (at that time) 99% due to the arrangements with Dr. Zelezny negotiated at that time, which would have provided Dr. Zelezny with 18% of CNTS shareholding, valued internally by SBS and CME in the amount of USD 72 million. Further, SBS calculated USD 27 million, on a discounted basis, payable to Dr. Zelesny as further compensation as contemplated at that time to receive Dr. Zelezny's cooperation. Further, SBS expected and calculated substantial synergy effects for the merged company (not included in the individual valuations for SBS and CME).

518. The February 18, 1999 due diligence referred to the following risks:

- *Necessity for effective agreement with Zelezny to insure control of license and operation*
- *Broadcast Council support for SBS entry in market*
- *Advertiser disappointment at loss of potential entrant*
- *NOVA has ceded important rights to non-related third party, Beseda Holdings (trademarks and merchandising)*
- *Zelezny and IPB have apparent control of Prima*
- *Feudal Lord may continue to resist operational control making it difficult to institute "best practices"*

(2) The March 29, 1999 Analysis (SBS)

519. On March 29, 1999 SBS management submitted a transaction update (Exhibit CQ149) for the "proposed acquisition of CME", prepared again by Mr. Knight, the underlying calculations prepared by Mr. Knight and Mr. Stogel. This proposal reflected in particular the license situation and referred to Dr. Zelezny's "machinations": *Seeking to shift balance of power to license company (CET 21), which he controls; Seeking to enlist support of Broadcast Council March 19 [15] letter from President of Council* and referring to CME's negotiations [with Dr. Zelezny] "essentially unsuccessful" to date. The March 29, 1999 transaction update comprised the following comparison of the February 19, 1999 and March 29, 1999 SBS Board Meeting presentations including a Risk Analysis of CME Assets:

SBS BROADCASTING SA

1 *SBS Board Meeting Presentation February 19, 1999*			Attributable STOCF SBS Implied vs CME Implied
SBS Stock Price	$27.375	1999	20.3x vs. 14.0x
		2000	11.4x vs. 10.4x
Implied Enterprise Value of CME		99-2000	14.6x vs. 11.9x
at .725 exchange ratio	687,172	2000-01	9.7x vs. 9.3x
Amount of new SBS shares issued	20,797,350		
Fully diluted CME/SBS	49,129,350		
% of ownership from CME shareholders	42%		

Assumptions

a. CME fully diluted shares at 28,686,000 including 3,038,000 options
b. Option proceeds amount to USD 57.9 million
c. Price of peace in Czech Republic equal to approximately **USD 100 million**, comprised of:
18% of CNTS (estimated value USD 400 million) = USD 72 million
Zelezny annuity for license renewal = USD 27 million

2 *SBS Board Meeting Presentation March 29, 1999*			Attributable STOCF SBS Implied vs CME Implied
SBS Stock Price	$30.00	1999	22.7x vs. 12.2x
		2000	12.8x vs. 8.9x
Implied Enterprise Value of CME		99-2000	16.4x vs. 10.3x
at .5 exchange ratio	560,667	2000-01	10.9x vs. 8.0x
Amount of new SBS shares issued	13,400,000		
Fully diluted CME/SBS	41,732,000		
% of ownership from CME shareholders	32%		

Assumptions

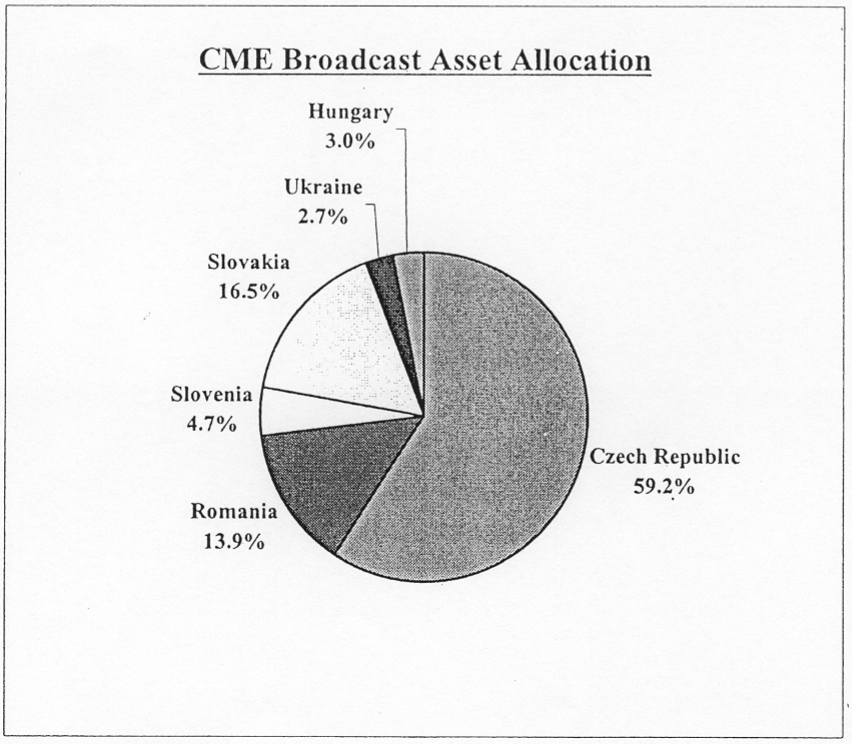
a. CME fully diluted shares at 26,800,000 including 1,152,000 options which represents options exercised with an SBS stock price of $40 a share
b. Option proceeds amount to USD 17.1 million
c. Price of peace in Czech Republic equal to approximately **USD 125 million**, comprised of:
18% of CNTS (estimated value USD 400 million) = USD 72 million
Zelezny annuity for license renewal = USD 27 million
4% fee for CET21 of which approximately USD 3.2 million per year is unrecoverable, using 8x multiple value equal to approximately USD 25 million

SBS BROADCASTING SA

Risk Analysis of CME Assets

Implied Enterprise Value of CME
at $30 SBS share price
and .5 exchange ratio **560,667**

CME Assets	2000/2001 Attributable STOCF	Applied Multiple	Individual Asset Value	% of Ent. Value
Czech Republic	41,506	8.0 x	332,048	59.2%
Romania	11,113	7.0 x	77,789	13.9%
Slovenia	3,279	8.0 x	26,228	4.7%
Slovakia	12,351	7.5 x	92,631	16.5%
Ukraine	2,186	7.0 x	15,303	2.7%
Hungary	n/a	n/a	17,000	3.0%
Total Net Asset Value			**560,999**	100%



520. The difference between this March 29 Update and the February projection was that a "substantial exceptional economic cost price of peace" was included in the March analysis. It was reflected by SBS in the amount of USD 125 million of cost, charged against CME enterprise value which was calculated at the reduced exchange ratio of 0.5. This "price of peace" comprised the reduced shareholding to be acquired by SBS in CNTS of 81 % rather than 99 % (already contained in the February proposal), an additional fee payment to CET 21 equal to 4% of gross revenue (evaluated by an additional USD 25 million) and USD 27 million "present value of future payments for renewal of license" (already contained in the February proposal and there allocated to Dr. Zelezny).

521. The SBS March 29, 1999 valuation of CNTS (Nova) discloses also the mechanics of the February 19, 1999 calculation. The total CME enterprise value in the February 19, 1999 valuation was calculated on the basis of a 9.3 multiple (CME) versus a 9.7 multiple (SBS) of the attributable 2000/2001 STOCF at a 0.725 exchange ratio with a total enterprise value for CME of USD 687,172 million. This calculation included a "price of peace" included in the valuation of CNTS in the amount of USD 100 million, comprised of "18% of CNTS (estimated value USD 400 million) = USD 72 million" and the annuity for Dr. Zelezny for "license renewal" = USD 27 million.

522. The March 29, 1999 valuation based on the 2000/2001 STOCF and a 8.0 multiple (CME) versus a 10.9 multiple (SBS) with an exchange ratio of 0.5. The implied enterprise value of CME was reduced to USD 560,667 million. This calculation implied a "price of peace" of approximately USD 125 million, comprised of "18% of CNTS (estimated value USD 400 million) = USD 72 million" for Dr. Zelezny, the "Zelezny annuity for license renewal = USD 27 million" and, further, a 4% fee for CET 21, evaluated at USD 25 million.

523. As shown in the "Risk Analysis of CME Assets" SBS calculated the attributable STOCF for CNTS at the amount of USD 41,506 million (attributed to 81% CME shareholding in CNTS) and calculated an individual asset value of CNTS on the basis of a multiple of 8,0, which showed an attributable CNTS asset value of USD 332,048 million, which corresponds to USD 409,9 million for 100 % CNTS. (This USD 41,506 million attributable STOCF for 2000/2001 for 81% CNTS shareholding corresponds to a 100% CNTS STOCF of USD 51,24 million). This average STOCF as a basis of valuation is in line with the management projections for Nova of February 17, 1999 (Annex CQ 11 page 5: average EBITDA 2000/2001 forecasts USD 50,1 million).

524. Therefore, the SBS valuation of CNTS in the amount of USD 400 million (STOCF 50.0 times 8.0 multiple) has a sound basis. This value is taken before allocating 18 % shareholding to Dr. Zelezny and before having deducted the 4 % CET21-fee. The NOVA management fee of 4,0 million projected for 2000 was not included in the valuation of CNTS as these items had been calculated by SBS at the level of the consolidated STOCF and not at the level of the individual company. The Tribunal is of the

view that (similar to the SBS analysis) the management fee cannot be added to the individual value of CNTS taking into account that management services also on a stand alone basis must be paid anyway. Unclear is, whether the discounted "Zelezny annuity for license renewal = USD 27 million" was reflected in the attributable CNTS 2000/2001 STOCF (USD 41,506 million). According to the narrative of the March 29, 1999 SBS transaction update (page 4), the USD 27 million present value "has been assumed in pricing" (Exhibit CQ149, Exhibit E-2).

525. SBS and CME on March 29, 1999 entered into the merger-agreement (The Reorganization Agreement).

526. The parties' interpretation of the SBS transaction differs. The Claimant's position is that CNTS' value deriving from the SBS transaction must be assessed at some USD 600 million. Citing the witness statements of Mr. Knight, Mr. Finkelstein and Mr. Stogel evaluating CNTS at USD 600 million, which under questioning the witnesses maintained, the Claimant is of the view that a multiple of 11.3 of the cash-flow after adding the NOVA management fee would be appropriate to determine the value of CNTS (Stogel's suggestion) or even a multiple of 12, which would have been used by Mr. Knight, as Mr. Knight testified. The witness Mr. Stogel, vice-president for business development of SBS, was the originator of the SBS calculations being the basis for the merger transaction (which in substance was the acquisition of CME by SBS against contribution of SBS shares).

527. Mr. Stogel in his supplemental witness declaration of July 26, 2002 in a recalculation of the "correct CNTS valuation" arrived at a value of USD 639.592 million, which he believed TV NOVA was worth at that time. Mr. Stogel used a 11.3 multiple (which he, however, did not use in his analysis of March 29, 1999 for CNTS). He further based his recalculation on the CNTS projected 2001 STOCF whereas in his Risk Analysis of CME Assets March 29, 1999 he used the 2000/2001 STOFC (which is 50,5 million (average) instead of 52,365 million). In an alternative calculation Mr. Stogel recalculated the value of CNTS with a 9.1 multiple, arriving to a CNTS value of USD 541,979 million after having added back the NOVA management fee of 4,2 million and the peace premium to Dr. Zelezny of USD 27 million.

528. Mr. Stogel's recalculations did not convince the Tribunal. His own calculations in the transaction update of March 29, 1999 was based on the average 2000/2001 STOCF (roughly USD 50.0 million and a multiple of 8.0). The comparison of the two SBS board meeting presentations of February 19, 1999 and March 29, 1999 clearly spell out that the estimated value of CNTS as a basis for the merger transactions was USD 400 million for a 100% shareholding in CNTS.

529. The total "price of peace" was evaluated as of February 19, 1999 by USD 100 million and as of March 29, 1999 by USD 125 million (after having added in March 1999 the additional 4%-fee for CET21).

530. The 11.3 multiple used by Mr. Stogel for recalculation purposes was not applied by him for the valuation of CNTS either in February or in March 1999. Also the 9.1 multiple used by him for an alternative calculation in his witness statement was not used by him for the February/March 1999 valuations of CNTS. This multiple was used by him in his analysis of the value of the 18% shareholding offered to Dr. Zelezny (Exhibit CQ32 dated 19.02.1999). This calculation was based on a USD 35 SBS-share value and a 20% discount compared with the implied multiple for SBS of the 2001 STOCF. This calculation (Exhibit CQ32) assessed the value of the 18% share to be allocated to Dr. Zelezny by USD 85,774 million in contrast to USD 72 million as shown in Exhibit A of the transaction update of March 29, 1999.

531. The Tribunal follows this valuation of the transaction update, which obviously was the basis for the transaction. The multiple of 8.0 is supported by Mr. Stogel's further recalculations, which he made as a "reality check" when he recalculated the value "CME without CNTS" later in 1999 when SBS and CME discussed a merger without CNTS. In these calculations he applied an 8.0 multiple with the reasoning that CME without CNTS should be valued at a lower multiple than CME with CNTS (para. 16 Stogel Supplemental Declaration). This declaration is in contrast to the multiples Mr. Stogel has actually applied for the non-CNTS CME Group companies in his "Risk Analysis of CME Assets" of the transaction update of March 29, 1999, which applied a multiple between 7.0 and 8.0 for the other CME companies.

532. Furthermore, the Tribunal did not take into account Mr. Stogel's further valuations as of July 18, 1999 and August 3, 1999 for CNTS, which have the same unpersuasive character, because Mr. Stogel, in these recalculations, based CNTS' value on multiples he did not use in the valuations as of February 19 and March 29, 1999.

533. The Tribunal's analysis is confirmed by Dr. Zelezny's *obiter dictum* in his April 27, 1999 presentation to the Media Council where he mentioned the valuation for CNTS of USD 400 million. Obviously this was a figure which was also communicated to Dr. Zelezny during the negotiations of his 18% projected shareholding in CNTS.

(3) Influence of the events March/August 1999 on valuation

534. The Tribunal considered whether the SBS valuation as of March 29, 1999 for CNTS in the amount of USD 400 million could have been influenced upwards or downwards by the events in 1999 leading up to the destruction of the Claimant's investment on August 5, 1999 by the termination of the Service Agreement by CET21. The Tribunal could not identify events, which had not been yet assessed by SBS in their due diligence, including Dr. Zelezny's "machinations". Also the AQS problem (outsourcing of programming to AQS by Dr. Zelezny in breach of his duties), had been considered by SBS in February.

535. The Tribunal considered whether the 8.0 multiple applied by SBS for the valuation of CNTS included a discount to be allocated to Dr. Zelezny and/or actions and inactions

of the Media Council. Mr. Knight's memorandum of February 17, 1999 addressed this issue. SBS assumed a "higher risk" for "Eastern European Operators" (compared with SBS companies) and therefore suggested a 15-25% discount to the corresponding SBS-multiples. The transaction update of March 29, 1999 showed that Dr. Zelezny's premium of 18% shareholding in CNTS was deducted *after* having established CNTS' value in the amount of USD 400 million. The attributable STOCF of 41,506 million as a basis for the individual asset value of CNTS represented only 81% of CNTS in the Risk Analysis of all CME Assets. Also the 4% CET21 fee was *not* included (as a deduction) in the CNTS 2000/2001 attributable STOCF. As noted above, it is unclear, whether the calculation included the "Zelezny annuity for license renewal = USD 27 million" which is not referred to explicitly in the CME-sensitized 5-year plan, which obviously was the basis for the calculation of the implied enterprise value for CNTS. Therefore the Tribunal takes the position that the clearly identified value of CNTS of USD 400 million must be the basis for the further assessment of the role of Dr. Zelezny and its impact on the value of CNTS as of August 5, 1999.

(4) "Price of Peace"

536. SBS on February 19, 1999 attributed to the "price of peace" an amount of USD 100 million, which was increased to USD 125 million as of March 29, 1999. The SBS March 29, 1999 valuation expressly considered Dr. Zelezny's "machinations", recognizing Dr. Zelezny's actual position in controlling CET 21 as license holder and recognizing Dr. Zelezny's support by the Media Council, documented by the March 15 letter from the chairman of the Media Council (mistakenly dated in the Transaction Update as "March 19th letter from President of Council", the day when the letter arrived).

537. The new situation (essentially unsuccessful CME negotiations, Dr. Zelezny being supported by the Media Council) was reflected by a further increase of the "price of peace" from USD 100 million to USD 125 million. This increase must be attributed to the Media Council's involvement, which supported Dr. Zelezny since the beginning of March 1999 as documented by the March 2 minutes of meeting between the Media Council and Dr. Zelezny. The Tribunal therefore is of the opinion that this increase of the "price of peace" cannot be deducted from the value of CNTS.

(5) The "Zelezny Factor"

538. In respect to the "price of peace" specified in the February 19, 1999 valuation (USD 100 million), the Tribunal examined the SBS documents, in particular, Mr. Knight's memorandum to the SBS board and the underlying calculations and reasoning.

539. The SBS valuation and due diligence report of February 19, 1999 did not make an allocation of special risks beyond the "Eastern European Operator risk" (which was reflected in the 8.0 multiple). On February 19, 1999 the Media Council's support for Dr. Zelezny had not materialized. However, SBS clearly understood that Dr. Zelezny was a key person necessary "to insure control of license and operation". The USD 27 million

was described in the calculations attached to Mr. Knight's memorandum as "Zelezny's annuity given license renewal in Czech Republic". This payment comprised the payment of USD 2 million per year till the year 2005 (termination of license) and USD 3 million per year thereafter for another ten years, the discounted value being calculated as USD 27 million (Exhibit CQ 31 – 1). The further attribution to Dr. Zelezny (18% shareholding in CNTS) reflecting USD 72 million was not further described in the SBS valuation. However, it is understood that CME and SBS thought it necessary to allocate a substantial shareholding to Dr. Zelezny in order to encourage his support for the future of CNTS. Therefore, Mr. Knight gave a recommendation to his board to do the deal provided, (inter alia), an "acceptable deal with Zelezny and legal and regulatory clearances" were to be reached.

540. In interpreting the SBS offer, the Tribunal has to decide to what extent the "price of peace", which SBS deducted by USD 100 million from the value of CNTS, must be allocated to Dr. Zelezny as a personal factor and what portion of the price of peace must be attributed to the Media Council's interference, which portion cannot be subtracted from the value of CNTS for the purpose of this arbitration. The parties' oral and written submissions (the latter comprising several hundred pages) on this subject were controversial. The Claimant's clear view is that the "price of peace" must be put aside as a negative component of the valuation of CNTS. The total "price of peace" for Dr. Zelezny must be attributed to the failure of the Czech Republic by its regulator, the Media Council, to protect the Claimant's investment.

541. This view is supported by the SBS "risk assessment" referring to Dr. Zelezny's powerful position in respect to the Media Council as regulator and his ability to influence the renewal of the license, as well as by the testimony of Mr. Knight. It is obvious that "Dr. Zelezny's leverage" would have been substantially less powerful if the 1996 amendment of the legal structure between CNTS and CET 21 (by removing the exclusive use of license from the CNTS MoA) would not have paved the way for Dr. Zelezny's activities. SBS assessment of the "price of peace" in the February 19, 1999 and the March 29, 1999 valuations clearly took account of this special role of Dr. Zelezny towards the Media Council and the maintenance of the license, a role would have been substantially weaker without the Media Council in 1996 having undermined the legal protection of the license, as found by the Tribunal in the Partial Award.

542. On the other hand, SBS risk analysis in the February 1999 valuation addressed as well commercial risks allocated to Dr. Zelezny, which were not influenced by the Media Council's interference.

543. SBS acknowledged Dr. Zelezny's apparent control of the competing TV station Prima, and his position as "feudal lord" resisting operational control. In particular, the offer of a 18% shareholding in CNTS was motivated by CME/SBS assessment that it would be of advantage to improve Dr. Zelezny's interest in and attention to CNTS, which comprised all facets of Dr. Zelezny's personality including, but not exclusively, his liaison with

Czech administrative institutions. Obviously, at that point of time, SBS and CME balanced out the disadvantages and advantages having Dr. Zelezny within the team or outside the team and were prepared to pay a USD 100 million premium to keep Dr. Zelezny on the team.

544. The Tribunal further took into consideration that Dr. Zelezny was the principal architect of Nova's success in the Czech Republic. As a matter of fact, in August 1999 he was in the position to dismantle CNTS within a short period of time by replacing CNTS as exclusive service provider and building up a new, fully operational broadcasting station with several hundred employees, programming and sale of advertisements.

545. Dr. Zelezny must have had and must have talents as manager and business man, which were attributed to his person, unrelated to the (unlawful) support he gained from the Media Council and to his behaviour in betraying his responsibilities to his employer. This element of Dr. Zelezny's role was obviously also seen by SBS as reflected in the reports to the SBS board and was made part of the "price of peace" assessment, attributed to Dr. Zelezny in the amount of USD 100 million.

546. Therefore, a substantial portion of the "price of peace" must be allocated to Dr. Zelezny in respect to his personal value for CNTS, disregarding whether the Media Council would have supported Dr. Zelezny in destroying CNTS or not. This "Zelezny Factor" must have had some value, on one side assessing Dr. Zelezny's positive influence Dr. Zelezny being manager of CNTS and CET 21 and on the other side assessing Dr. Zelezny's potential negative influence as an opponent of the Claimant's investment in the Czech Republic (disregarding whether in breach of his professional duties towards CNTS).

547. The Tribunal also considered Dr. Zelezny's breach of his duties under the Nova Consulting contract, as adjudicated by the ICC Tribunal, when he established a programming company AQS and by this interfered with CNTS business, which clearly had nothing to do with the Media Council's actions and inactions. The ICC Tribunal compensated these breaches by winding up the Nova Consulting transaction but without adjudicating further damage claims to CME Media (the Claimant in the ICC Arbitration).

548. Even without the intervention of the Media Council in the Claimant's investment it must be expected that SBS upon or after the acquisition of CME would have contributed a premium to Dr. Zelezny either by transfer of shares or by cash payment in order to stabilize its business at the level CNTS had achieved in February/March 1999.

549. The Tribunal considered that the "Zelezny annuity for license renewal = USD 27 million" must be attached to Dr. Zelezny's collaboration with the Media Council and hence cannot taken into account when valuing CNTS as of August 5, 1999. The 18% shareholding to be assigned to Dr. Zelezny had the purpose of keeping or bringing back Dr. Zelezny on CME's team and, by this ensuring that Dr. Zelezny would support CNTS in

the mercer of CNTS' and CET 21 interests, as contemplated by CME/SBS in order to solve the Zelezny problem. The Tribunal's view is that the dominating motivation for vesting the 18% shareholding in Dr. Zelezny was the personality of Dr. Zelezny and SBS/CME's appreciation of his personal influence was not necessarily limited to his influence on the Media Council. The Tribunal, therefore, in evaluating the SBS offer and the "price of peace" as deductible, allocates the amount of USD 72 million as a deductible from the USD 400 million value of CNTS, to be attributed to the personal value factor of Dr. Zelezny independent of the actions and inactions of the Media Council. The Tribunal's assessment of the value of CNTS [100%] after having deducted the "Zelezny Factor" is USD 328 million.

(6) The Respondent's expert's assessment of the SBS offer

550. The Respondent in a "CNTS Valuation Report" of July 1, 2002, prepared by its expert NM Rothschild, valued CNTS in the range of USD 226 million to USD 296 million. This valuation is a result of a recalculation by Rothschild on the basis of parameters found in the SBS valuations, supplemented with further elements and discounts.

551. The Rothschild Analysis is based on the calculation of the unadjusted equity value of CME Ltd implied by the March 1999 SBS offer, which according to Rothschild was USD 374 million, based on the SBS average share price for the two months January and February 1999 (and USD 378 million based on SBS average share price in February 1999 only). This equity value in the Rothschild calculation is based on 28.1 million fully-diluted CME Ltd shares outstanding at February 1999, and an exchange ratio of 0,5 SBS shares for each CME Ltd shares, implying the issuance of 14.1 million new SBS shares at an assumed two-months average SBS share price of USD 26.63 per share.

552. The Tribunal makes two observations in respect of this assessment. The equity value identified by Rothschild for CME Ltd on the basis of the SBS March 1999 analysis is not far from the valuation made by SBS for CNTS as separate asset, here above identified by USD 400 million, taking into account that the individual asset value for CNTS as used for the final determination of the share ratio included the "peace price" of USD 125 million, which to a certain extent must be eliminated from the value of CME Ltd and the value of CNTS, respectively, as explained above. After adding back a portion of the "price of peace" in accordance with the Tribunal's findings related to the "Zelezny Factor" and when disregarding certain deductions, which the Tribunal cannot accept (see below) Rothschild's calculation for the value of CNTS comes rather near to the Tribunal's valuation.

553. Secondly, the Tribunal notes that the negotiating parties, the willing buyer and the willing seller, SBS and CME, did not evaluate their respective companies on the basis of unadjusted equity value, but on the basis of their management projections for the 2000/2001 STOCF for CME and the 2000 and/or 2001 STOCF for SBS (USD 53.8 million and/or USD 72.3 million), which STOCF in respect to SBS was well above the SBS

STOCF of 1998 (USD 18,1 million) or 1999 (USD 30,2 million). The negotiating parties' reasons for selecting the 2000/2001 STOCF as basis for their valuations remained undisclosed. It is clear, however, that SBS valued CNTS at USD 400 million and made "price of peace" deductions which were accepted by CME.

(7) Rothschild's deductions

554. Rothschild further made certain deductions, which, for the purpose of the present valuation in the eyes of the Tribunal, are unsustainable.

555. Rothschild identified that the final SBS offer of 0,5 SBS shares per CME Ltd share implied a premium to market of approximately 61%. The payment of a premium in a bid may reflect a number of factors, including the value of control, the payment of some or all of the value of the synergies to the target shareholders and an additional premium to be paid over the cash price to secure acceptance in an stock offer. In a market research comparing premiums paid in share deals for European broadcasting business for various years, Rothschild found that the premium identified by Rothschild was too high.

556. Further, Rothschild requested the application of a "liquidity" discount to SBS's offer price.

557. Thirdly, Rothschild criticized the allocation of value to be attributed to the non-CNTS Assets of the CME Group. Rothschild recalculated the enterprise value of these other assets, the treatment of CME Ltd net debt and by this recalculated the implied CNTS value in the range between USD 226 and 296 million.

558. All these calculations, as the Tribunal understands, were not done or disclosed as having been done by the willing buyer and the willing seller, SBS and CME, at the time when the transaction was closed. Should the parties have made these calculations contemporaneously, the parties to the transaction being advised by investment bankers, these calculations would have been priced into the respective valuation formulas.

559. The Rothschild deductions, therefore, are unpersuasive. The Rothschild calculations (summary of scrutinizing the SBS offer on page 68 of the CNTS Valuation Report July 1, 2002 by Rothschild) would have come to the following value for CNTS after having added back the 15% liquidity discount and the "price of peace":

Rothschild Offer value (nominal) CME	USD 374 million
Rothschild net debt added	USD 134 million
Enterprise value of CME (without discount)	USD 508 million
"price of peace" added back	USD 125 million
	USD 633 million
Rothschild value of non-CNTS assets deducted	USD 207–259 million

Implied value of CNTS (before deducting attributable “price of peace”)	USD 426-374 million
Mean value on the basis of the Rothschild valuation without discounts, as adjusted by the Tribunal before deducting “price of peace”	USD 400 million

560. The Tribunal's assessment of the SBS / CME transaction is, that the SBS / CME merger was negotiated at arms-length and that the valuation of CNTS reflects the valuation of a willing buyer and a willing seller at the point of time relevant for this arbitration.

561. The valuation of CNTS at USD 400 million is largely driven by the application of the multiple 8.0, which was selected by SBS (and obviously accepted by CME) in reference to Eastern European operators risks in contrast to other countries, where SBS operated its broadcasting stations. The multiple of 8.0 was not influenced by special risks attributed either to Dr. Zelezny nor to the Media Council’s actions and inactions. It was a risk seen by SBS from operation of broadcasting stations in “Eastern European” countries as experienced also by CME with its other stations outside the Czech Republic. The Tribunal’s position is that it is not the Respondent’s duty to make good this general risk, which may have many reasons outside of the control of the parties to this arbitration.

562. This view of the Tribunal is in line with the jurisprudence of the Iran-United States Claims Tribunal, which has held that a general deterioration of the economic situation of the country where the investment was made or the general circumstances of an ongoing development must not be compensated to the investor (Ebrahimi (Shahin Shaine) v. Iran (1994) 30 Iran - US CTR 170, see also: Sola Tiles Inc. v. Iran (1987) 14 Iran – US CTR 223). The purpose of an investment treaty is not to put the investor into a more favourable position than he would have been in the normal development of his investment within the circumstances provided by the host country. A multiple of more than 8.0 would assume a general investment climate for the “Eastern European operator”, better than given (and experienced by CME) in practice. Therefore, the Tribunals’ analysis in respect to the value of CNTS in the amount of USD 400 million (before deducting the “Zelezny Factor”) is firm.

D. Discounted Cash Flow Valuation (DCF)

(1) Expert’s Valuations

563. The Claimant submitted in support of its claim a discounted cash flow valuation of CNTS, supplied by Dr. Thomas Copeland. Dr. Copeland and his company Monitor in

their reports identified the enterprise value of CNTS on a stand-alone basis by USD 556 million, to which a control premium of USD 100 million – for a total of USD 656 million – should be added to arrive at the fair market value of CNTS "defined as the price a willing buyer could be expected to pay a willing seller to purchase CNTS on a stand-alone basis". (CNTS Valuation Report by Monitor Group December 14, 2001, page 1).

564. The Respondent submitted a discounted cash flow valuation of CNTS prepared by Rothschild (CNTS valuation report July 1, 2002), which arrived at the estimate that the net present value of CNTS cash flows at August 5, 1999 is USD 320 million to USD 350 million, based on a central DCF value of USD 335 million. Both parties agreed that the DCF method is the appropriate methodology (Statement of Claim Respecting Quantum page 42 and Rothschild "Valuation on CNTS September 12, 2002 page 21). According to Rothschild, DCF is the only reliable methodology in this case. The experts agreed on the same discount rate of 10.83 %. Monitor based its analysis on the forecasts prepared by CNTS to 2005 and prepared its own forecast from 2006 to 2008.

565. Rothschild generally agreed with the methodological basis of Monitor's DCF model, but disagreed in two significant areas (i) CNTS market share estimates; and (ii) CNTS programming costs. In Rothschild's view, CNTS' market share and profit margins would have diminished in the light of increased competition, reflecting a similar historical experience of other European broadcasters. Whilst CNTS gained "first mover" competitive advantage in its early years of operation, economic logic and experience together with convergence of European media markets indicates that this advantage would have been eroded over the time.

566. In the main analysis both experts assume that CNTS incorporates, for practical purposes, the entire economics of operating TV Nova (excluding the AQS issue) and that CNTS had secure access to the license and sources of programming. Further, the experts assumed in respect to Dr. Zelezny,

- that he is not acting against the interest of CNTS in respect of either CET 21 license terms or competing against it; and
- is not actively influencing any competitor in the interests of CNTS.

(2) The USD 200 million Valuation Gap

567. Further, both experts in their basic analysis assumed that CNTS could reasonably expect CET 21's license to be renewed in 2005 on no less favourable terms to CNTS. Both experts accepted in principle the management forecasts until 2005, however, modified by the experts. Disregarding these common assumptions, the experts' valuation for CNTS differed by more than USD 200 million. The experts disagreed not only on CNTS ad market share estimates (more conservatively by Rothschild and more ag-

gressively by Monitor), they also differ in assessment of the future development of programming cost.

568. Based on Rothschild central DCF value of USD 335 million Rothschild identified the difference in valuation to the Monitor valuation as follows:

Rothschild DCF valuation			USD 320 – 350 million
Change to			
- Monitor advertising share assumptions	+	USD	101 million
- Monitor programming assumptions	+	USD	79 million
- Monitor terminal growth rate (4% vs. 3.4%)	+	USD	27 million
- Other revenues	+	USD	2 million
Adjusted Monitor DCF valuation		USD	545 million
- Inclusion of Jan-Aug 1999 cash flows		USD	11 million
Monitor DCF valuation		USD	556 million

569. The difference between the Rothschild DCF valuation of USD 320 – 350 million (central DCF value USD 335 million) and the adjusted Monitor DCF valuation of USD 545 million is a gap of roughly USD 210 million (Rothschild identification of difference September 11, 2002).

(3) The Main Areas of Valuation Difference

570. From the temporal allocation (see tables below) it becomes clear that 70 % of the experts different valuation derives from the time period, in which the experts made their own extrapolations without the support of the management forecast, which ended in 2005. The main differences were the following tables, which show a comparison of the management forecasts, the Monitor forecasts and the Rothschild forecasts for

(i) Market share and size
(ii) Revenues
(iii) Acquired programming (cash flow)
(iv) Production expenses
(v) Total programming costs (production expenses plus acquired program)
(vi) EBITDA margin

571. Further, Rothschild submitted a corresponding chart reflecting the differences between the experts' projections for the development of the main drivers for valuation "Advertising market share", self-production and acquired program.

The following tables and the chart, prepared by Rothschild, are, as the Tribunal cross-checked, sufficiently reliable for the purpose of this arbitration.

Assumptions (i): Market share and size

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
TV Advertising Market (gross, CZK '000)												
CME - February Forecast	5,476,617	6,024,741	6,282,506	6,973,582	7,810,411	8,747,661	9,797,380	10,777,118	11,639,288	n/a	n/a	n/a
% Change	n/a	*10.0%*	*4.3%*	*11.0%*	*12.0%*	*12.0%*	*12.0%*	*10.0%*	*8.0%*	n/a	n/a	n/a
CME - June Forecast	"	"	6,200,000	6,882,000	7,707,840	8,632,781	9,668,714	10,635,586	11,486,433	n/a	n/a	n/a
% Change	n/a	"	*2.9%*	*11.0%*	*12.0%*	*12.0%*	*12.0%*	*10.0%*	*8.0%*	n/a	n/a	n/a
Monitor	"	6,025,000	6,283,000	6,974,000	7,810,000	8,748,000	9,797,000	10,777,000	11,639,000	12,650,000	13,748,000	14,941,000
% Change	n/a	*10.0%*	*4.3%*	*11.0%*	*12.0%*	*12.0%*	*12.0%*	*10.0%*	*8.0%*	*8.7%*	*8.7%*	*8.7%*
Rothschild	"	"	"	"	"	"	"	"	"	"	"	"
% Change	n/a	"	"	"	"	"	"	"	"	"	"	"
Advertising Share												
CME - February Forecast	71.2%	70.0%	70.0%	70.0%	68.0%	66.0%	64.0%	62.0%	60.0%	n/a	n/a	n/a
CME - June Forecast	"	"	69.0%	69.0%	"	"	"	"	"	n/a	n/a	n/a
Monitor	"	"	70.0%	70.0%	"	"	"	"	"	60.0%	60.0%	60.0%
Rothschild	"	"	"	65.0%	62.1%	60.0%	58.3%	57.0%	55.9%	54.9%	54.0%	53.2%

Assumptions (ii): Revenues

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Net spot TV Revenues (CZK '000)												
CME - February Forecast	3,027,339	3,264,764	3,430,248	3,807,576	4,142,642	4,503,296	4,890,852	5,211,814	5,447,187	n/a	n/a	n/a
% Change	*10.7%*	*7.8%*	*5.1%*	*11.0%*	*8.8%*	*8.7%*	*8.6%*	*6.6%*	*4.5%*	n/a	n/a	n/a
CME - June Forecast	"	"	3,312,660	3,703,893	4,088,238	4,444,156	4,826,622	5,143,369	5,375,651	n/a	n/a	n/a
% Change	"	"	*1.5%*	*11.8%*	*10.4%*	*8.7%*	*8.6%*	*6.6%*	*4.5%*	n/a	n/a	n/a
Monitor	"	3,267,066	3,430,518	3,807,804	4,142,424	4,503,470	4,890,662	5,211,757	5,447,052	5,920,200	6,434,064	6,992,388
% Change	"	*7.9%*	*5.0%*	*11.0%*	*8.8%*	*8.7%*	*8.6%*	*6.6%*	*4.5%*	*8.7%*	*8.7%*	*8.7%*
Rothschild	"	"	"	3,537,633	3,782,457	4,093,155	4,458,525	4,791,240	5,070,643	5,413,031	5,788,601	6,199,040
% Change	"	"	"	*3.1%*	*6.9%*	*8.2%*	*8.9%*	*7.5%*	*5.8%*	*6.8%*	*6.9%*	*7.1%*
Net Revenues (CZK '000)												
CME - February Forecast	3,175,907	3,478,518	3,715,248	3,967,576	4,314,642	4,687,336	5,087,775	5,422,521	5,672,643	n/a	n/a	n/a
% Change	*6.8%*	*9.5%*	*6.8%*	*6.8%*	*8.7%*	*8.6%*	*8.5%*	*6.6%*	*4.6%*	n/a	n/a	n/a
CME - June Forecast	"	"	3,422,660	3,863,893	4,260,238	4,628,196	5,023,545	5,354,076	5,601,107	n/a	n/a	n/a
% Change	"	"	*-1.6%*	*12.9%*	*10.3%*	*8.6%*	*8.5%*	*6.6%*	*4.6%*	n/a	n/a	n/a
Monitor	"	3,478,196	3,715,518	3,967,804	4,314,424	4,687,470	5,087,562	5,422,457	5,672,552	6,162,900	6,697,864	7,279,088
% Change	"	*9.5%*	*6.8%*	*6.8%*	*8.7%*	*8.6%*	*8.5%*	*6.6%*	*4.6%*	*8.6%*	*8.7%*	*8.7%*
Rothschild	"	"	3,712,019	3,695,669	3,952,346	4,274,936	4,653,030	4,999,360	5,293,333	5,651,309	6,043,560	6,471,846
% Change	"	"	*6.7%*	*-0.4%*	*6.9%*	*8.2%*	*8.8%*	*7.4%*	*5.9%*	*6.8%*	*6.9%*	*7.1%*

Assumptions (iii): Acquired programming (cash flow)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Acquired programming (CZK '000)												
CME - February Forecast	n/a	634,242	763,196	511,151	787,472	843,382	887,332	887,332	982,190	n/a	n/a	n/a
% Change	n/a	n/a	*20.3%*	*-33.0%*	*54.1%*	*7.1%*	*5.2%*	*0.0%*	*10.7%*	n/a	n/a	n/a
CME - June Forecast	n/a	"	628,350	465,192	716,668	767,551	807,540	849,613	893,878	n/a	n/a	n/a
% Change	n/a	n/a	*-0.9%*	*-26.0%*	*54.1%*	*7.1%*	*5.2%*	*5.2%*	*5.2%*	n/a	n/a	n/a
Monitor	n/a	662,957	681,000	458,000	684,000	732,000	777,000	826,000	879,916	937,000	998,000	1,064,000
% Change	n/a	n/a	*2.7%*	*-32.7%*	*49.3%*	*7.0%*	*6.1%*	*6.3%*	*6.5%*	*6.5%*	*6.5%*	*6.6%*
Rothschild	n/a	"	680,359	426,588	626,597	667,578	710,636	761,550	821,092	859,218	900,507	946,004
% Change	n/a	n/a	*2.6%*	*-37.3%*	*46.9%*	*6.5%*	*6.4%*	*7.2%*	*7.8%*	*4.6%*	*4.8%*	*5.1%*
Acquired programming as a % of Net Revenues												
CME - February Forecast	n/a	18.2%	20.5%	12.9%	18.3%	18.0%	17.4%	17.2%	17.3%	n/a	n/a	n/a
CME - June Forecast	n/a	"	18.4%	12.0%	16.8%	16.6%	16.1%	15.9%	16.0%	n/a	n/a	n/a
Monitor	n/a	19.1%	18.3%	11.5%	15.9%	15.6%	15.3%	15.2%	15.5%	15.2%	14.9%	14.6%
Rothschild	n/a	"	"	"	"	"	"	"	"	"	"	"

Assumptions (iv): Production expenses

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Production Expenses (CZK '000)												
CME - February Forecast	415,214	502,409	642,084	658,778	672,777	683,878	695,162	706,632	718,292	n/a	n/a	n/a
% Change	*15.3%*	*21.0%*	*27.8%*	*2.6%*	*2.1%*	*1.7%*	*1.7%*	*1.7%*	*1.7%*	n/a	n/a	n/a
CME - June Forecast	"	"	623,992	673,911	724,455	775,166	829,428	887,488	949,612	n/a	n/a	n/a
% Change	"	"	*24.2%*	*8.0%*	*7.5%*	*7.0%*	*7.0%*	*7.0%*	*7.0%*	n/a	n/a	n/a
Monitor	"	503,005	627,187	626,215	626,897	660,948	742,922	826,724	919,892	1,022,986	1,139,443	1,267,379
% Change	"	*21.1%*	*24.7%*	*-0.2%*	*0.1%*	*5.4%*	*12.4%*	*11.3%*	*11.3%*	*11.2%*	*11.4%*	*11.2%*
Rothschild	"	"	627,370	659,366	743,619	854,314	986,733	1,108,299	1,244,841	1,398,205	1,570,464	1,763,946
% Change	"	"	*24.7%*	*5.1%*	*12.8%*	*14.9%*	*15.5%*	*12.3%*	*12.3%*	*12.3%*	*12.3%*	*12.3%*
Production expenses as a % of Net Revenues												
CME - February Forecast	13.1%	14.4%	17.3%	16.6%	15.6%	14.6%	13.7%	13.0%	17%	n/a	n/a	n/a
CME - June Forecast	"	"	18.2%	17.4%	17.0%	16.7%	16.5%	16.6%	17.0%	n/a	n/a	n/a
Monitor	"	14.5%	16.9%	15.8%	14.5%	14.1%	14.6%	15.2%	16.2%	16.6%	17.0%	17.4%
Rothschild	"	"	16.9%	17.8%	18.8%	20.0%	21.2%	22.2%	23.5%	24.7%	26.0%	27.3%

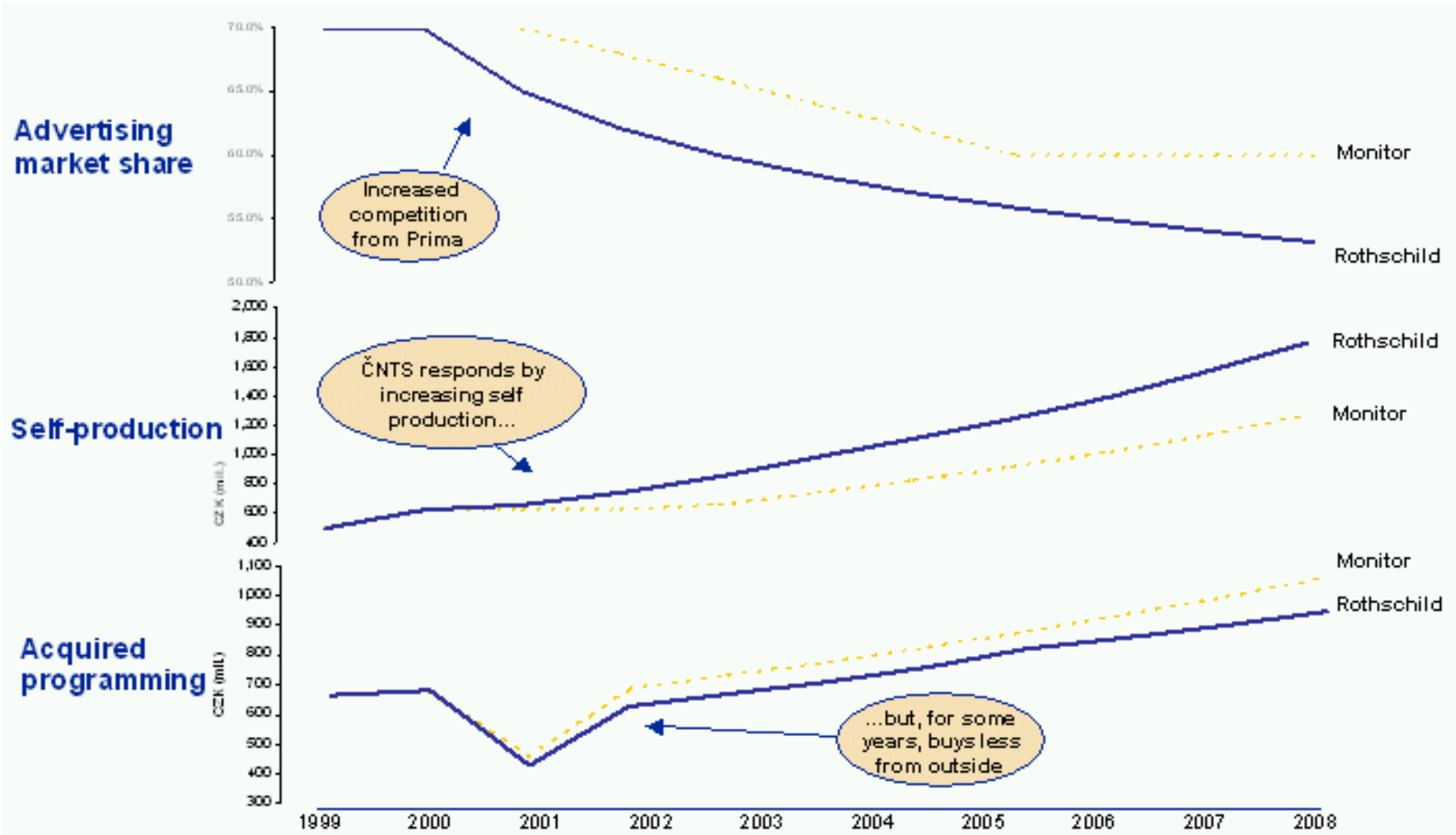
Assumptions (v) **Total programming costs (production expenses plus acquired programming)**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Programming (CZK '000)												
CME - February Forecast	n/a	1,136,651	1,405,280	1,169,929	1,460,249	1,527,260	1,582,494	1,593,964	1,700,482	n/a	n/a	n/a
% Change	"	"	*23.6%*	*-16.7%*	*24.8%*	*4.6%*	*3.6%*	*0.7%*	*6.7%*	n/a	n/a	n/a
CME - June Forecast	"	n/a	1,252,342	1,139,103	1,441,123	1,542,717	1,636,968	1,737,101	1,843,490	n/a	n/a	n/a
% Change	"	"	*10.2%*	*-9.0%*	*26.5%*	*7.0%*	*6.1%*	*6.1%*	*6.1%*	n/a	n/a	n/a
Monitor	"	1,165,962	1,308,187	1,086,215	1,301,897	1,374,948	1,464,922	1,595,724	1,738,892	1,892,986	2,066,443	2,255,379
% Change	"	"	*12.2%*	*-17.0%*	*19.9%*	*5.6%*	*6.5%*	*8.9%*	*9.0%*	*8.9%*	*9.2%*	*9.1%*
Rothschild	"	"	1,307,728	1,085,953	1,370,216	1,521,893	1,697,369	1,869,848	2,065,933	2,257,424	2,470,971	2,709,949
% Change	"	"	*12.2%*	*-17.0%*	*26.2%*	*11.1%*	*11.5%*	*10.2%*	*10.5%*	*9.3%*	*9.5%*	*9.7%*

Assumptions (vi): EBITDA margin

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
EBITDA margin												
CME - February Forecast	50.3%	50.5%	44.8%	46.4%	43.6%	45.4%	48.1%	49.1%	49.2%	n/a	n/a	n/a
CME - June Forecast	"	"	43.0%	46.6%	43.5%	44.4%	45.4%	45.2%	44.2%	n/a	n/a	n/a
Monitor	"	50.6%	45.6%	48.7%	47.1%	48.3%	48.8%	47.9%	46.0%	46.0%	46.1%	46.1%
Rothschild	"	"	45.3%	43.4%	44.1%	41.0%	40.6%	39.0%	37.0%	35.6%	34.3%	33.0%

Changes, which drive the valuation



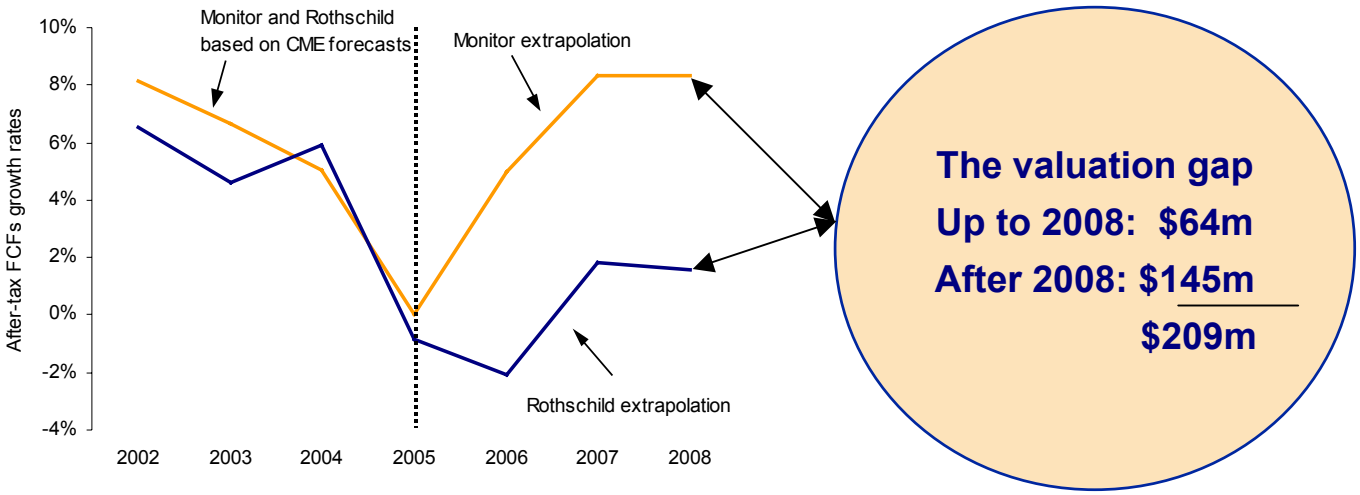
(4) Forecast Period – Terminal Value

572. Both experts applied the same methodology in dividing the valuation procedure in two parts: (i) in the front part the „Forecast Period", for which explicit forecast are prepared for each period year by year, which was taken for a ten years' period from 1999 to 2008 and (ii) for the period thereafter in perpetuity for which period an estimation of the value of the business at the end of the Forecast Period was made (the "terminal value" or "continuing value") which takes account of the future prospect at the time. For the Forecast Period Monitor relied on the cash flow projections of the CNTS management available until 2005. Thereafter, Monitor made its own extrapolation for the next three years until 2008, assuming a stable CNTS TV ad market share of 60% and a stable net CNTS ad revenue gross rate of 8,7% (which followed the market growth rate of the gross Czech TV ad market). (Monitor Group CNTS Valuation Report December 14, 2001 page 44).

573. Rothschild made certain assumptions and adjusted the ad market share of CNTS for the Forecast Period, believing that the companies' internal projections for 2002 to 2005 were overly optimistic, if those projections were extended out to 2008. Rothschild applied the Monitor's DCF model, however, with a lower advertising share and consequently lower advertising income, as seen in the above tables. Further, Rothschild has adjusted the 1999 free cash flows to account for the CNTS cash flows only for the period August 5, 1999 to December 31, 1999. In respect to the extrapolated cash flow projections for the years 2006 to 2008 Rothschild believed that the stable 60% advertising share was too optimistic. Whereas Monitor assumes a linear decrease of 2 percentage points per annum from 70% in 2000 to 60% in 2006 (based on CME Ltd internal projections) and stabilizing thereafter (Monitor assumptions), Rothschild believed this simple extension of a 60% advertising share after 2005 to be unrealistic and decreased the advertising share in accordance with the first part of the forecast period. From these differences as recorded in the above tables, the main deviations derived as the terminal value (continuing value), being largely dependent on last year of the Forecast Period.

(5) DCF Valuations gap time-wise

574. This valuation gap of roughly USD 210 million can be split into the period from 2002 to 2008, based (partly until 2005) on CNTS management forecast, in which period the expert differed only in the amount of USD 64 million and the time thereafter after 2008, for which period the experts made (further) different extrapolations with a valuation gap of USD 145 million as shown in the following chart submitted by Rothschild.



Fundamental differences over longer-term performance projections **(Rothschild)**

575. Reconciliation of Rothschild and Monitor DCF valuations by Rothschild

(USD in million)	NVP of Forecast Period CF	% Total Value	NVP of Terminal Value	% Total Value	Total Enterprise Value
Rothschild Valuation	167	50%	168	50%	335
Adj. Monitor Valuations (1)	232	43%	313	57%	545
Difference	-65	31%	-145	69%	-210

(1) adjusted by eliminating the January/August 1999 cash flow, which should be added to the residual value

576. This Analysis by Rothschild is largely in accordance with Monitor's Discounted Free Cash Flow Valuation (Monitor Group CNTS Valuation Report December 14, 2001, page 12 and 14), which shows that the continuing value (or terminal value) reflects roughly 60% of the all-over CNTS value and thereby exceeds a cash flow value deriving from the first ten years' Forecast Period. Taking into account that experts almost agreed on the perpetuity growth rate of 3,4%/4%, the large difference between the experts' calculations derive from the gap of the projected cash flows for the years 2006, 2007 and 2008 and the further calculation of the continuing value (or terminal value) based on the cash flow in 2008.

(6) The Main Valuation Divergences

577. The continuing value is largely based on the last year's explicitly forecasted free cash flow FCF or the earnings before interest and taxes (EBIT) in the last year of the explicit Fore-

cast Period (Monitor CNTS Valuation Report December 14, 2001, page 11). The substantial gap between the experts' valuations for the year 2008, therefore, became dominating for the experts' valuation results. The 2008 cash flow assessment as determined by the experts for the year 2008 as shown in the above tables and the chart was stabilized as the basis for the "continuing value" and, therefore, became decisive for the overall valuation results for CNTS.

(i) Advertising Market Share

The most important element for the projected cash flow is the ad market share.

578. Monitor's projection in respect to the ad market share is mostly driven by the assumption that the expected decrease of the Nova ad market share will not start before the year 2001 and thereafter following the CNTS management February forecasts will decrease from 70% in the year 2000 down to 60% by annual steps of 2 percentage points until the year 2005; thereafter it is stable at 60%. Rothschild projected an earlier decrease in the year 2000 by 5 percentage points and thereafter a steady decrease until the year 2008 down to 53,2% ad market share.

579. Monitor justified its moderate rate of decrease of the ad market share by the outstanding market position of TV Nova. No competitor was in sight. No competitor was to be expected due to the specific Czech TV market situation according to which a newcomer would find a rather unattractive situation, when deciding to enter a comparatively small market (10,3 million population) with TV advertising spending (gross) in the amount of roughly USD 350 million and the necessity to adapt the broadcasting to the Czech language, which is costly. Prima, in the eyes of Monitor, was no prospective competitor as it was at the verge of bankruptcy.

580. Rothschild derived its market share assumptions from direct experience of four comparable European broadcasters (TF1; RTL4; Mega and ITV). In the further comparison of some 18 European TV channels with an over 30% viewing share (audience share 1992 / 2002) Rothschild developed the view that there is general tendency that, as respective TV markets mature, the individual broadcaster loses audience share (Rothschild December 12, 2002 ad share page 6). Rothschild identified an average loss of audience share by 12 percentage points in ten years. This argument was refuted by Claimant, referring to the fact that the loss of audience shares does not necessarily mean a loss of ad market share. In respect to TV Nova, the position was that Nova had an increasing power ratio; therefore, it lost less ad share than audience share.

581. The comparability of the four stations selected by Rothschild in order to prove a decline of audience share was rejected by Claimant in respect to each individual compared station, leaving the Tribunal with the impression that a general comparison with other European broadcasters is questionable.

582. The review of Rothschild audience assumptions for TV Nova (page 84 Rothschild CNTS Valuation Report July 1, 2001) made clear that the Rothschild assumptions have merits, but only to a limited extent. In particular, the witness statement of Mr. Paine, main author of the Rothschild report, made apparent that behind the Rothschild assumptions is one driving factor that, in the Czech Republic competition for TV Nova will be increased by the existing small competitor Prima.

583. This underlying model "Prima gets strong" was based on the expectations that in a sound business world the splendid earning situation of Nova will not pass by without attracting competitors. Rothschild maintained that Prima was and is a target for a potential new investor, who would come in with the same strength as CME had entered the Czech market, an investor who would bring in similarly to CME the Hollywood studios as program suppliers and who would supply cooperating strength (Paine at London hearing day 10, page 125, 128, 169, 171, 172, 173, 175, 201, 225 and day 11, page 17, 18, 19). Mr. Paine's position was that the newcomer would not replace TV Nova, but attenuate Nova's niche by providing special broadcasting services, such as a sports channel, youth channel, music channel, etc.

584. The Tribunal takes into consideration that indeed the development of TV Nova's ad market share is not a question of replacing TV Nova but whether a competitor could reduce the TV Nova ad market share in the disputed range of 5 to 7 % points (see above table (i) "market share and size" – last line).

585. The Tribunal identified the KAGAN World Media reports, referred to by both experts, as a reliable source to countercheck the parties' determination of CNTS advertising forecasts. The KAGAN report 1999 (CQ 546) and the KAGAN 2001 report (CQ 561) in the eyes of the Tribunal provide neutral information for the expected ad market share development in the Czech Republic. According to the 2001 KAGAN World Media report, the Czech Republic ad market share developed within the years 1999 to 2002 as follows:

Change of Net TV Ad Market Share, 1999 to 2000

	Net Ad Rev.			Market Share		
	1999	2000	Change	1999	2000	Change
	(CK m)	(CK m)	(%)	(CK m)	(CK m)	(%)
Nova	3,475	3,540	1,9	64,0	62,0	(3,1)
CT1	1,303	1,359	4,3	24,0	23,8	(0,8)
Prima	624	782	25,3	11,5	13,7	19,1
Market Total	5,430	5,710	5,2	100.0	100,0	--

586. From this assessment it becomes clear that as a matter of fact Prima was a strong mover. Prima substantially improved its market share from 11,5 % in 1999 to 13,7 % in 2000 (19,1% increase), whereas Nova's market share decreased from 64,0% to 62,0%.

587. The 2001 KAGAN projections for Czech Net Television Advertising Forecasts comprise the years until 2011 (excerpts):

Czech Net Television Advertising Forecasts

Net TV Ad Revenues (USD million)	1996	1997	1998	1999	2000	2001	2002	2003
CT	19.34	22.74	27.38	34.42	35.92	34.66	34.55	36.90
TV Nova	63.62	68.32	74.75	89.94	91.63	88.24	87.71	91.65
Prima	4.27	6.96	13.50	16.15	20.24	19.43	19.24	21.64
Other	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Total	87.24	98.04	115.64	140.54	147.81	142.35	141.52	150.22

Net TV Ad Revenues ($ million)	2004	2005	2006	2007	2008	2009	2010	2011
CT	40.11	43.36	46.62	49.83	53.02	56.15	59.24	62.26
TV Nova	98.25	105.03	111.86	118.68	125.45	132.10	138.70	145.22
Prima	25.32	28.87	32.10	35.28	38.45	41.60	44.72	47.77
Other	0.03	0.03	0.04	0.04	0.05	0.05	0.06	0.06
Total	163.72	177.30	190.61	203.84	216.97	229.90	242.72	255.31

588. These actual figures and percentage points differ from the parties' experts projections and the CME forecast for the years 1997 until 2008, as shown in the above table (ii). The Tribunal notes that the statistics submitted by the parties were differently compiled. The CME management for some statistics used gross figures. For example, the comparison of the Monitor forecast (CQ 155) with a compilation of forecast figures used by Monitor shows that growth figures sometimes are expressed in nominal growth and sometimes in real growth or both; (see Monitor report, Appendix 2.3). Also the Monitor forecasts as expressed in CQ 155 are not totally in conformity with the above cited KAGAN projections (CQ 561) as KAGAN exclusively deals with net spot revenues. The market shares differ. However, the KAGAN projections have the merit that they are produced by a neutral generally accepted media agency and the Tribunal, therefore, gives weight to these projections.

589. They show a gradual increase of the Prima ad market share up to 18%, which has an impact for the critical range discussed here (5% to 7% points) and a continuing decrease of the TV Nova net TV ad revenue share also after 2008.

590. The Tribunal further considered the Zenith Media Report of July 2001, which on pages 28-30 described the market situation of TV Nova compared with Prima. Prima caught up from just 3,2 % in 1997 to 15,5 % in 1999 of ad expenditure (page 30 Zenith Media Report), which assessment by Zenith is in accordance with the KAGAN projections.

591. The Zenith July 2001 Report in respect to Nova and Prima said (excerpt):

> *"TV Nova still clearly dominates the Czech TV market. It accounted for 51.4% of adult viewing in 1999, and attracted 64.2% of TV advertising expenditure. TV Nova has always attracted a much higher share of advertising than viewing. As the principal supplier of mass audiences, it is the benchmark by which other channels are judged, and can command a premium for its airtime by virtue of its reach. It also benefits from the very limited supply of airtime on CT, which cannot compete equally for advertising. However, TV Nova's share of ad expenditure, like its share of viewing, has dropped off markedly from its peak in the mid-1990s."*

> *"The biggest of these smaller channels is TV Prima, a near-national channel that began as a local channel called Premiera in 1993, but has since built up a network of local affiliates, and gained carriage on satellite and cable networks, giving it 88% penetration of TV homes. Its early years were disappointing; it attracted just 4% of viewing in 1994 and even less in 1995 and 1996. Since 1997, though, a series of new investors have injected funds that have allowed TV Prima to improve its output and establish itself as a mainstream channel, targeted particularly at women and families. In 1999 it won the rights to some popular series that were originally broadcast on TV Nova, and managed to win over some of their regular viewers. TV Prima attracted 9% share of viewing in 1977, 11% in 1998 and 13% in 1999. Since its launch, TV Prima's lack of reach compared to TV Nova and CT has meant*

> *that it had to sell its audiences at below the market-average price. It still does, but since 1998 it has been able to attract a higher share of viewing than advertising because it is free to sell many more ads than CT – it currently sells more than three times the volume. TV Prima attracted 15.3% of ad expenditure in 1999, up from just 3.2% in 1997.*

592. The 2001 KAGAN Report stated in respect to the development of the Net TV Ad Market 1999-2000:

> *In 2000, Nova was the dominant ad revenue recipient taking CK3.5 bil. and a 62 % market share. All of the channels increased their net ad revenue income in 2000 over 1999. However, only Prima outstripped the market average of 5,2 % - with the channel increasing its revenue share by 25,3 % year on year.*

(ii) and (iii) Self-production and Acquired Programming

593. The parties' experts accepted that there is an inter-dependence between self-production costs and acquired programming costs and a dependence of both from the advertising market share. TV Nova in defense against rising competitors such as Prima must raise the self-production costs and has to buy less outside programming for some years (see above table (i) and (iii) and chart). The experts do not differ in the principle that if for the advertising market share competition will increase either from Prima or any other newcomer in the market, the consequence will be that the self-production costs and the costs for acquired programming (which are inter-dependent) will grow. Rothschild projected a substantial self-production cost increase and an assumed growth over inflation at the annual rate of roughly 8% per year for a period of ten years, which in fact would triple the self-production costs till the year 2008 from USD 20.0 to USD 60.0 million (Rothschild, September 12, 2002, page 11).

594. This rather aggressive assumption is driven by the assumed increase of competition (shared by the Tribunal to some extent) and the high cost growth over inflation rate. The Tribunal estimates that the decrease of Nova's ad market share would take place on the basis of the KAGAN projections, which is in the middle between the Monitor and Rothschild projections. In respect to self-production costs, the Tribunal consequently would take the mean value between Monitor and Rothschild projections (for example for 2008 the one year gap of expenditures would narrow from USD13.0 million to USD 6.5 million). In respect to the reduced acquired programming growth, the experts were more or less in line (see table (ii) above) including the projected drop for 2000 (see CQ 11 and Rothschild chart September 12, 2002, page 10). This would mean that the gap for production and programming costs could possibly narrow down to roughly USD 5 million for the year 2008.

(7) The Tribunal's assessments related to the Parties DCF calculations

595. The Tribunal noted that none of the experts nor the Parties' witnesses including the CME management submitted hard facts or plausible arguments for the expert's expectations that the TV NOVA ad market revenues will increase on a long term basis at a growth rate between 7% (Rothschild) and 8% (Monitor) per year, which was well above the CME Forecast until 2005 (table (ii) above). The Tribunal decided to take a more conservative approach, in particular thereby taking into account that the expert valuations were largely driven by their own extrapolations of the CME Management Net Revenues Forecasts (which ended 2005, see table (ii) above) for the years 2006, 2007, 2008 and, based thereon, for the terminal value, which extrapolations in the Tribunal's eyes in particular in respect to the Monitor forecasts are optimistic.

596. However, the Tribunal is not in the position to be more specific than the parties' experts. The gap between the experts' valuations of roughly USD 210 million in the Tribunal's eyes can only be closed by a rough assessment, taking into account various considerations of the parties, their experts and their extensive conflicting pleadings and the Tribunal's view that the KAGAN Reports projections and the Zenith Report assessments for the market position of Nova and Prima have merit.

597. The Tribunal's view is that the increasing competition will affect the overall cost for self-production and acquiring programming cost. This view is supported by the short term cost development of CNTS in 1999, which forced the management to implement a sharp cost reduction program. This situation was the consequence of macro economic situation and a specific CNTS development. The CNTS management June 1999 EBITDA margins, therefore, projected for 1999 a recovery above 45% and a moderate decrease for 2000/2001 (see table (vi) above).

598. The Tribunal scrutinized the Rothschild (USD 335 million) and the adjusted Monitor (USD 545 million) valuation under the aforementioned aspects. The Tribunal considered that the Monitor EBITDA margin assumptions (table (vi) above) were more optimistic than the CME management June 1999 forecasts and that Monitor at the level of 60% and Roths-child at the level of 53.2% projected a stable ad market share as a basis for calculating for the terminal value (after 2008), whereas the 2001 KAGAN Report projected a continuing decline until 2011.

599. The Tribunal considered that according to the 2001 KAGAN Report (CQ 561 page 213) the growth forecasts of Czech Net TV Ad Revenues will decline from its peak of 21.53 % in 1999 to 5.19 % in 2011, in contrast to both parties experts joint assumptions for the "TV Advertising Market (gross)" for the period from 1998 until 2008 of more than 8 %, which

assumptions were based on the CME June 1999 management forecasts for 1998 to 2005 (CQ 99 page 362).

600. The Tribunal considered the September 1999 KAGAN Report (CQ 546) forecasts for the Net TV ad revenues for TV NOVA of CK 3,126 million in 1999 with a TV ad share of 63.03 % of the Czech ad market, going up to CK 4,896 million in 2008 with a TV ad share of 56.77 %, which forecasts show a more conservative approach (even when taking into account that the KAGAN forecasts started from a 10 % lower basis in respect to revenues and market share) compared with the Monitor projected Net Spot TV Revenues of CK 3,4 million (1999) with a market share of 70 %, going up to CK 6,992 million (2008) with a market share of 60 % and the Rothschild projected Net Spot TV Revenues of CK 3,4 million (1999) with a 70 % market share (Monitor and Rothschild for 1999 identical), going up to CK 6,199 million (2008) with a market share of 53,2 %.

601. The Tribunal further considered that according to Claimant (Nov. 12, 2002 London Hearing page 68) of the USD 128 million difference between Monitor and Rothschild that derives from the ad share assumptions, USD 100 million of it is accounted for by Rothschild's projected decrease of 5 % points of market share in 2000 (CQ 156 as submitted by Monitor in response to the Tribunal's request dated Sept. 11, 2002 page 3) and further that of the USD 43 million difference in production costs in valuation between Monitor and Rothschild (CQ 156 page 5) USD 40 million of that is attributable to the first three years of the forecasts (expense growth in 2000 trough 2003).

602. Taking all this into account it is the Tribunal's view that the net advertising revenue market share for TV Nova will stabilize between the Monitor projections and the Rothschild projections for the year 2000 until 2008 (within the Forecast Period) and will thereafter decline further.

603. The Tribunal decided to follow the more conservative approach of the 1999 and 2001 KAGAN Forecasts and estimates the value for CNTS as of August 5, 1999 on the basis of the parties' adjusted DCF valuations in the range between USD 400-420 million, without taking into consideration special factors such as the "Zelezny Factor". The parties DCF calculations, which must be adjusted upwards and downwards in accordance with the above considerations, are therefore in the Tribunal's eyes not in contradiction to of the Tribunal's decision to establish the CNTS value of USD 400 million as the SBS offer.

604. The Tribunal, however, makes clear that the adjusted DCF calculation due to its dependence on disputed assumptions can serve only as a confirmation of the Tribunal's findings in assessment of the SBS offer, which as described above provided a firm value for CNTS at the amount of USD 400 million. The Tribunal does not see any need to review this finding in the light of the parties' DCF valuations, which contain a rather high element of un-

certainty and speculation. Further, the Tribunals' view is that in accordance with the SBS valuation a control premium must not be considered.

(8) Effect of License Renewal in 2005

605. The parties disputed the possibility that the Nova 12 years' broadcasting license rendered to CET 21 in 1993 would not be renewed at January 31, 2005. Rothschild for this alternative suggested an implied enterprise value for CNTS as of August 5, 1999 at the amount of USD 114 million. The Tribunal cannot accept this argument.

- CET 21's broadcasting license was meanwhile extended by the Media Council on January 22, 2002 by another ten years until 2017 (CET 21 being purportedly under control of Dr. Zelezny).
- SBS did not seriously consider a non-renewal of the license except that non-renewal could be threatened by the interference of Dr. Zelezny in collaboration with the Media Council. This would have been (another) severe breach of Treaty and must be put aside when determining the value of CNTS.
- Generally, broadcasting licenses in Europe are renewed as a matter of ordinary administrative practice and the parties could identify to the Tribunal only one known case (an English broadcasting license) in Europe in which a broadcasting license was not renewed, although the license requirements were fulfilled by the license owner.

The possibility of a non-renewal of the license, therefore, must be disregarded as a matter of fact.

606. Moreover, the Respondent's argument that, as a matter of law, only the present 12 year term of the license running until the year 2005 could be made the basis for the valuation of CNTS is unfounded. The object of this arbitration is not to determine the value of a broadcasting license. The object of this arbitration is to decide upon the damage which the Claimant incurred in respect of its investment in the Czech Republic as a consequence of the Media Council's actions and inactions and collaboration with Dr. Zelezny, a Czech national, in his unconcealed attempt to seize Claimant's investment in the Czech Republic. The license is only one element of the Czech Republic's legal framework for the Claimant's broadcasting operations.

(9) Valuation of CNTS by Analysts

607. The Claimant further supported its valuation of CNTS by referring to various analysts having evaluated the Claimant's Czech broadcasting operations over various years in the amount of USD 600 million and more. The Claimant's submissions in this respect have limited merit. These analysts' reports do not change the Tribunal's view about the "fair market value" of CNTS on August 5, 1999.

608. The Tribunal is of the view that the valuation by analysts in this specific case must be disregarded due to the fact that a more reliable valuation is available on the basis of the SBS valuation, confirmed by the adjusted DCF analysis as made by the Tribunal on the basis of the parties' expert DCF valuations. Analysts, as a matter of principle, can only value a company on the basis of the underlying facts and financial data of the corporation. This financial data in respect to CNTS and/or Nova TV derived from statutory stock exchange filings of the parent company CME Media Ltd and special analysts' reviews and, to some extent, interviews with the management of CME.

609. Although the Tribunal could (and indeed did) review the CME statutory filings, the Tribunal cannot determine what level and what quality of financial data was given to the analysts, which were described by Claimant to have confirmed the value of CNTS. This analysts' information process took place without control by this Tribunal and, therefore, the analysts' valuations cannot be taken into account, when comparing with the SBS valuation, made by a willing buyer, or the DCF valuations made by Rothschild and Monitor (the latter valuations for the purpose of this arbitration).

(10) Valuation of CNTS on the basis of the Nova Consulting transaction

610. Also the Nova Consulting transaction, which according to the Claimant established a value for CNTS in the amount of more than USD 500 million, cannot be the basis for evaluating the value of CNTS. The subject of the Nova Consulting transaction in 1997 was a minority share of 5,8% as a result of intensive negotiations between Dr. Zelezny and CME, in which negotiations Dr. Zelezny threatened to sell this share to a questionable third party. CME decided not to permit that a third party investor to enter into the CME business and bought the 5.8% share at the price requested by Dr. Zelezny. CME senior management (Mr. James Cox) assessed the present market value for 100% of CNTS at USD 310-402 million which he further discounted "by the 15% non-controlling factor" (letter of James Cox July 18, 1997 RQ 51).

611. Further a small change of value of the Nova Consulting share would drive the CNTS 1997 value up or down with the leverage of 5,8% to 100%. The result could be totally disconnected from reality. The Tribunal, therefore, cannot accept the Nova Consulting transaction of 1997 as a basis for valuation of 100% of CNTS in 1999, which is two years later.

(11) The Residual Value

612. The residual value of CNTS as of August 5, 1999 must be deducted from the value of CNTS. The Tribunal considered the parties' positions submitted in respect of the residual value, which CNTS still had after its business had been vitiated on August 5, 1999 as a consequence of removing CNTS as the exclusive service provider for CET 21. The Tribunal agrees that the residual value includes the assets of CNTS that have been liquidated and paid to Claimant since August 5, 1999, the liquidatable value of CNTS' remaining assets minus the costs of winding up CNTS. The Tribunal, therefore, assessed in accor-

dance with the Claimant's calculation of a net residual value of CNTS at the amount of USD 27,5 million.

613. This calculation includes dividends upstreamed to Claimant after August 5, 1999 in the amount of USD 19,127 million and the estimated market value of buildings and equipment in the amount of approximately USD 10,565 million. The Tribunal finds the Claimant's calculation plausible, according to which further cash on hand had been netted out against liabilities and ongoing maintenance costs through an assumed wind-up of CNTS as of December 31, 2002. The Respondent's counter arguments, according to which costs and losses occurred after August 5, 1999 cannot be calculated, is not sustainable. The closing down of business would necessarily require certain closing costs, which must be credited against income, achieved during the closing period.

614. The Respondent's position, according to which the book value of CNTS in the books of CME in the amount of USD 52,7 million as of December 31, 1998 and 1999 should be taken into account, is not sustainable. CME may have had reasons not to write down its investment, in particular as long as CME could expect compensation for the losses incurred as a result of the various law suits initiated including this arbitration.

615. Further, the Respondent's recalculation of the dividends "declared" do not necessarily contradict Claimant's position dealing with the actual payout. The valuation of the value of the building must be accepted. A deterioration of value during a reasonable period for sale due to the general business development must be attributed to the damage incurred by CNTS as a consequence of the evisceration of its business as of August 5, 1999.

616. The Respondent's further suggestion that the estimated selling costs of CNTS until December 31, 2001 are too high, is unconvincing. It is obvious, that the original CNTS budget will differ from the actual figures, which reflect the situation that CNTS' business was run down with the necessity to close it. The Tribunal's assessment of the residual value is, therefore, USD 27,5 million.

617. The Tribunal is of the view that the residual value must further reflect the cash flow for the period between January 1, 1999 and August 5, 1999 in the amount of USD 11 million. According to the Claimant's and the Respondent's calculations of the residual value dividends were calculated only for periods after August 5, 1999. The value of CNTS was established by SBS and confirmed by the DCF calculations (as adjusted by the Tribunal) in the amount of USD 400 million on the basis of the February and March cash flow projections as of August 5, 1999, without expressly considering CNTS' dividends to be distributed to its shareholders for 1999 for the period between January 1, 1999 and August 5, 1999.

618. The Parties did not clarify whether the dividends "declared" or "upstreamed" for the time after August 5, 1999 comprised the cash flow for January 1 – August 4, 1999 and when dividends for the period after August 5, 1999 were distributed to the shareholders, further, when costs for winding-up the business actually occurred. The Parties did not discount income or expenditures as of the date of the valuation of CNTS, which is August 5, 1999. On the basis of the Parties' controversial submissions the Tribunal must conclude that the January – August 1999 cash flows in the amount USD 11 million as adjusted by Rothschild in its comparison of the DCF summary (Rothschild September 12, 2002, page 14) and re-added by Monitor (Monitor Supplementary Report July 28, 2002, page 67) are at least partly reflected by the balance of Respondent's "declared dividends" for the periods after August 5, 1999 and the Claimant's "up streamed dividends", which difference was USD 5,8 million. The Tribunal therefore decided to add the January – August 1999 cash flow to the residual value and to disregard the Parties' difference between the "up streamed" and the "declared" dividends.

619. Cash payments received by CME from the repayment of shareholders' loans in the amount of USD 2,758 million in 2002 must not be taken into account as these were a repayment of debt. As a conclusion the Tribunal in respect to the residual value cannot be more precise than the Parties' contradictive and, to some extent, unclear statements reveal. The Tribunal, therefore, assesses the residual value in the amount of USD 38,5 million as of August 5, 1999.

(12) Calculation of awarded Claim

620. The Tribunal calculates the compensation to be awarded to Claimant as follows:

Base Amount CNTS 100 %	USD 400,0 million
"Zelezny Factor" (unrelated to Media Council's collaboration)	USD 72,0 million
Residual Value as of August 5, 1999	USD 38,5 million
CNTS 100 % Value minus "Zelezny factor" and Residual Value	USD 289,5 million
CME Shareholding 93,2 % (99 % minus 5,9% Nova Consulting)	USD 269,814 million

VI.
The Interest Claim

a) Claimant's Position in Respect to Interest

621. Claimant requests 12% interest from August 5, 1999 (date of expropriation) until the date of payment. Claimant bases its request on the "governing Czech statutes" fixing the interest rate "at double the Czech National's official discount rate prevailing on the first day of delay in repayment of the debtor's monetary obligation" (Art. 517 Czech Civil Code and

§ 1 Government Decree No. 142/1994 Coll., dated July 8, 1994 (hereinafter "Government Decree"). The Czech National Bank fixed the discount rate throughout August 1999 at 6%. According to Claimant this fixed rate remains applicable regardless of economic conditions or the positions of the parties. Claimant moreover refers to Art. 8 (6) and Art. 3 of the Treaty which oblige the Tribunal to provide that the "*full security and protection*" accorded to foreign investors "*shall not be less than that accorded… to investments of its own investors*". Further, Art. 3 (5) of the Treaty entitles foreign investors to rely on Czech Law provisions if that provision provides a more favourable treatment than the Treaty-provisions. To justify the 12% interest-rate Claimant also refers to the borrowing rate for a CME-loan at the Czech Saving Bank with an interest rate of more than 12% until its re-negotiation in 2001.

622. Claimant is of the opinion that it is neither necessary nor logical to apply the U.S. Dollar LIBOR to determine the interest rate simply because Claimant has selected to receive an award in U.S. Dollars. Although Claimant's investment was made and its profits were recorded in U.S. Dollars, business of the investment was transacted in Czech Crowns and took place exclusively in a Crown-based environment. The profits were recorded in Dollars only after having been received in Crowns and converted. Should the Tribunal not award interest at the Czech statutory rate of 12% per year, Claimant requests annual compounding of any other award of interest the Tribunal grants.

b) Respondent's Position in Respect to Interest

623. Respondent's position is that interest should only be awarded from the date of any Final Award on the Quantum. In its Sur-Reply Respondent stated that the interest, to be paid from the date of the expropriation onwards until the date of the payment, should only be awarded at a rate appropriate for the currency claimed, thus U.S.-Dollar LIBOR. Compound interest is not to be granted as it finds a basis neither in international nor in Czech law.

624. Czech law merely awards simple interest on damages for the breach of legal obligations; compound interest can only be awarded on the basis of the parties' special agreement (Art. 517 Civil Code and Art. 369 Commercial Code). The Czech Civil Code (Art. 517 and § 1 Government Decree) links the interest rate to the double of the varying discount rate fixed by the National Bank. As of April 26, 2002 the official discount rate was of only 2.75 %, which would lead to an interest rate of 5.5% for that period. Moreover, Respondent refers to the average discount rate from August 6, 1999 to June 28, 2002 which was of 4.8% (Statement of Defense respecting Quantum, para 909). At the hearing on Day 24, Respondent set out (page 133 of the Court Report, November 14, 2002) for the first time that the Government Decree does not apply to Claimant's request as its scope of application is restricted to penal rates for a claim in debt. Respondent thereby referred to the translation of the Government Decree submitted by Claimant which translation "…*effective as of the first day of delay in repayment of a financial dept*" differs from the translation

provided in Respondent's exhibit "*[…] and valid on the first day of delay with pecuniary performance*."

625. Regarding Claimant's alleged borrowing rate, Respondent points out that (i) not CME but CME Media borrowed the 850 million CSK loan and that (ii) the Czech National Bank determines the commercial interest rates prevailing in the Czech Republic and which are reflected in the Prague Inter-Bank Offered Rates (PRIBOR). The average 3-month PRIBOR rate has been of 5.2 % from August 6, 1999 to June 28, 2002.

626. Furthermore, Respondent refers to CME having only requested "simple interest" at a rate of 5% in the ICC arbitration (which in the eyes of this Tribunal has no bearing on this proceeding).

c) Award on Interest

627. In awarding interest in respect of the rate and period, the Tribunal has considered the provisions of the Treaty (in particular Art. 3 (5) and Art. 5 (c)), Czech law and international law principles (see III.A.(1)).

628. The award on interest finds its basis in Art. 5 (c) of the Treaty. This provision incorporates the international law principle that in cases of expropriation "*just compensation"* has to be granted to the party deprived of its investment. If such compensation payment has been withheld temporarily contrary to the provisions of the Treaty, compensation can only be "*just*" if it considers delayed payment - and the loss resulting there from - on the basis of an interest rate. This is a standard feature in money awards (see also: Schreuer, the ICSID-Convention, A Commentary, Art. 46 para. 30; Emilio Agustin Maffezini vs. Kingdom of Spain, ICSID case No. ARB/97/7 Award of the Tribunal November 13, 2000, Vol. 16, No. 1 ICSID review - Foreign Investment Law Journal (2001), page 1 (30); Art. 38 Draft Articles of the International Law Commission on the Responsibility of States for International Wrongful Acts, adopted 53rd session (2001)).

629. Czech law also provides interest on late payments (Art. 517 Czech Civil Code, § 1 Government Decree, No. 142/1994 Coll. dated July 8, 1994). Claimant therefore is entitled to be awarded interest on the compensation for the Treaty breaches of the Respondent in order to achieve "full" compensation.

(aa) Period of Interest

630. The Tribunal awards interest from the date of initiating Arbitration Proceedings by Claimant on February 22, 2000 until the date of payment. On August 5, 1999 Respondent deprived Claimant of its investment by a breach of the Treaty, as on August 5, 1999 the Media Council's actions and inactions in support of Dr. Zelezny's destruction of the Claimant's investment materialized when CET 21 terminated the Service Agreement with CNTS on dubious grounds. According to Art. 5 (c) of the Treaty a compensation for this breach

of the Treaty had to be paid without "undue" delay. Therefore, interest must be awarded from that date when the principal sum should have been paid.

631. When determining the period of interest the Tribunal took into account Czech law. The Czech commercial law in this respect deals with contractual damage claims between entrepreneurs. Therefore, the Tribunal took into account Art. 563 Czech Civil Code according to which a claim becomes not due before the creditor requests the debtor to fulfil its obligation (unless the due date of a claim is stipulated by an agreement, the law or a decision). The debt becomes due on the day following the request.

632. The Tribunal took into account a legal opinion of the Czech Supreme Court dated February 22, 1967 according to which in respect to tort claims Art. 563 Czech Civil Code applies and a tort claim is due at the date following the request for payment (published in Sbirka soudnich rozhodnuti a stanovisek "Collection of Court Decisions and Legal Opinions" Rt III/67). The request to fulfil a damage claim requires no specific form. If there is no separate request the request is deemed to be made by serving the statement of claim to the respondent. (Holub, Fiala, Bicovsky, Obcansky zakonik "Civil Code" 8th Edition, 2002, page 461).

633. In respect to the Claimant's compensation claim under the Treaty an agreement of a due date is not given. Therefore, interest must be paid as of the date following the Claimant's request to the Respondent to pay the amount claimed under the Treaty. As the Claimant did not submit in this arbitration when exactly the Claimant claimed compensation from the Respondent, the date of the initiation of the arbitration proceeding is the decisive date.

634. By notice of arbitration dated February 22, 2000 Claimant sought the relief that the Respondent inter alia shall be held liable for the damages Claimant has incurred to date in an amount to be determined by the Tribunal, taking into account, among other factors, the "fair market value" of CME's investment prior to the breach of the Treaty. The Claimant, further, specified its request according to which the compensation shall represent the genuine value of the investments affected. The Tribunal's finds that this claim fulfils the requirement of service of a claim as referred to above.

635. The Tribunal, further, took into consideration that under case law in accordance with international law principles, international tribunals in expropriation cases granted interest as of the date when the expropriation took place, which would have been August 5, 1999. The Tribunal further considered that in the London Arbitration Mr. Lauder initiated proceedings on or about August 19, 1999 in his capacity as alleged controlling ultimate shareholder of CME. Nevertheless, the Tribunal's position is that in this arbitration due to the various circumstances the Respondent became aware of the compensation claim raised by the Claimant when the notice of arbitration of Claimant was served by the Claimant. The Tribunal determines this date to be February 23, 2000.

(bb) The Interest Rate

636. The Tribunal does not determine the interest rate on the basis of the U.S.-Dollar-LIBOR rate as suggested by Respondent as Claimant's decision to claim in US-Dollars does not affect the application of the provisions of the applicable law for determining the interest rate.

637. Neither the Treaty nor international law provide for a interest rate to be applied. Czech National Law refers – in the absence of any party agreement on the interest rate - to the "double discount rate fixed by the Czech National Bank and valid on the first day of the delay with pecuniary performance" (Art. 517 Czech Civil Code and § 1 Government Decree).

638. The provisions of Art. 517 Czech Civil Code apply independently of the legal basis of the claim (tort or contract) for the delayed payment as in accordance with Art. 489 Czech Civil Code. Liabilities can derive also from damage claims. Art. 517 refers to the Government Decree.

639. The parties dispute whether the reference to the discount rate fixed by the Czech National Bank in § 1 of the Government Decree fixes the interest on the discount rate as at the beginning of the delayed payment for the entire period until payment takes place or whether the interest rate varies in accordance with the changing discount rates. Neither of the parties provided support by commentaries or precedents of their understanding of the "correct" wording of § 1 Government Decree.

640. The Tribunal therefore interprets the meaning of the reference in § 1 Government Decree to the discount rate on the basis of the wording of the Decree which is as follows:

> *"§ 1*
> *Výse úroku z prodlení ciní rocne dvojnásobek diskontí sazby, stanovené Czeskou národní bankou a platné k prvnímu dni prodlení s plnením penezitého dluhu."*

641. § 1 Government Decree clearly sets out that the interest rate is determined by the double of the actual discount rate as determined from time to time by the Czech National Bank at the point of time when the debt was due, which was February 23, 2000. On February 23, 2000 the discount rate fixed by the Czech National Bank was of 5 %, therefore the interest rate to be applied since the due date (February 23, 2000) until the date of payment is 10% p.a..

(cc) No Compound Interest

642. The Tribunal does not grant compound interest in this case. Civil Law Countries, such as the Czech Republic, only provide for simple interest by specifying the rate to be applied by statute (§ 1 Government Decree). Czech law only grants compound interest on the basis of an agreement by the parties (Art. 369 Commercial Code). Such an agreement does not exist.

643. Moreover, in accord with international law principles and international arbitration practice, the Tribunal does not award compound interest since the purpose of compensation - to "fully" compensate the damage sustained – in this case does not require the awarding of compound interest, having regard to the generous interest provision of the Czech Statute.

644. In respect of international law, arbitral tribunals in the past awarded compound interest infrequently. The Iran-US Claim Tribunal has rejected claims for compound interest, even in cases where the claimant was entitled to compound interest under the relevant contract, in order to insure that the compensation was not out of the proportion to the possible loss that was incurred (*see* Anaconda – Iran Inc. vs. Iran (1986) 13 Iran-US CTR 199; R.J. Reynolds Tobacco Co. vs. Iran (1984) 7 Iran-US CTR 181; Sylvana Technical Systems vs. Iran (1984) 5 Iran-US CTR 141). At the same time, that Tribunal has recognized that "no uniform rule relating to interest has emerged from the practice in transnational arbitration…"(McCullough & Company v. The Ministry of Post, Telegraph and Telephone, The National Iranian Oil Company, and Bank Markazi (1986), 11 Iran-US CTR 3, 28.)

645. However, in recent years international arbitral tribunals, particularly those acting under bilateral investment treaties, have increasingly have awarded compound interest essentially in recognition of the prevalent contemporary commercial reality that companies that borrow pay compound interest (*see,* Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica (ICSID Case No. ARB/96/1), Metalclad Corporation v. United Mexican States (ICSID Case No. ARB(AF)/97/1), Emilio Agustin Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7) and Wena Hotel Limited v. Arab Republic of Egypt (ICSID Case No. ARB/98/4). The United States Court of Appeals for the District of Columbia in 2001, after extensive argument of the question of whether international law permits the award of compound interest, held that McKession made "a convincing case that contemporary international law does not…require simple interest." McKesson HBOC, Inc. et al. v. Islamic Republic of Iran, 211 F.3rd 1101,1111-12 (2001); See also F.A. Mann, Compound Interest as an Item of Damage in International Law, in Further Studies in International Law, p. 378.). Among the circumstances which justify the award of compound interest are back-to back financing-obligations of the investor (F.A. Mann, l.c., p.384).

646. The Claimant did not demonstrate that it borrowed money from banks and paid compound interest. The fact that CME Media, a CME group company, borrowed 850 million CZK from the Czech Savings Bank for an interest rate of almost 12.0 % does not justify the award of compound interest. Moreover, this loan only refers to a rather small amount not comparable to the principal amount of this Final Award. Finally, the Claimant acknowledged that CME Media renegotiated the loan in October 2001. The interest rate was then reduced to 3.5 % over the 12-month Prague Interbank Offered Rate (PRIBOR rate) which at that time was 3.4%.

647. The Tribunal does not find particular circumstances in this case justifying the award of compound interest. The calculation of the compensation itself already fully compensates Claimant for the damage suffered. Awarding simple interest compensates the loss of use

of the principal amount of the award in the period of delay (see draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its 53rd session (2001); extract from the Report of the International Law Commission, Art. 38 para 4, p. 271, reproduced in Crawford, The International Law Commission's Articles on State Responsibility (2002), p. 236).

VII.
Costs of the Arbitration

648. The Tribunal has to decide on the costs of the Quantum Phase of this arbitration. According to para. 142 (2) Czech Civil Procedure Code, a court may allocate the costs of the proceedings to be borne by the parties to the extent the parties win or lose. According to Art. 14 UNCITRAL-Arbitration Rules, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. With respect to the costs of legal representation and assistance the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

649. The Arbitral Tribunal considered Claimant's Claim comprising USD 495,2 million plus 12% interest p.a. since August 6, 1999 until date of payment whereas the Tribunal adjudicated an amount of roughly USD 270 million plus 10% interest since initiating the arbitral proceedings. The Tribunal is of the view that apportionment is reasonable, taking into account the circumstances of the case. The parties shall equally bear fees and costs of the Tribunal, which costs have been settled as of the day of rendering this Award in accordance with the Tribunal's agreement with the Parties to settle the Arbitrators' fees in accordance with the agreed hourly rates. In respect to the Parties costs for legal representation and assistance the Tribunal is of the view that each Party shall bear its own costs.

VIII.
The Tribunal's Unanimous Decision and Arbitrator's Separate Opinion

650. This Final Award is unanimously agreed by the three Arbitrators. Mr.Ian Brownlie appends a separate opinion.

IX.
The Arbitral Tribunal's Decision

1. The Respondent is ordered to pay to the Claimant USD 269.814.000 (U.S.Dollar twohundredsixtyninemillioneighthundredandfourteenthousand).
2. The Respondent is ordered to pay interest on the above amount at the rate of 10% from February 23, 2000 until the date of payment.
3. Each Party shall bear its own out-of-court fees and expenses.
4. The Tribunal determines the Arbitrators' fees at the amount of USD 1.351.203,44 (including disbursements and costs). These fees and costs shall be borne by both Parties equally. Fees and costs have been settled in agreement with the Parties. No further payment or refund of fees and costs is to be made.
5. All other claims are hereby dismissed.

Place of Arbitration: Stockholm
Date of this Arbitral Award: March 14 2003

The Arbitral Tribunal

Dr. Wolfgang Kühn	Judge Stephen M. Schwebel	Ian Brownlie, C.B.E., Q.C.
Chairman	Arbitrator	Arbitrator