RESOLUTION OF THE BOARD OF THE ARBITRATION COURT ON THE POWERS OF THE ARBITRATION COURT TO DECIDE IN DISPUTES ON DOMAIN NAMES

In the case of Plaintiff S. against Defendants 1) B. and 2) CZ.NIC, to refrain from acts infringing the Plaintiff's rights issuing from a trademark and from a company name and to transfer a domain name registered by a Defendant to the Plaintiff, the Board of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic made, pursuant to section 23 par. 1 of the Rules of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic, the following resolution at its session held on 22nd February 2007:

1. The powers of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic to deal with and decide in this case against the First Defendant are given.
2. The powers of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic to deal with and decide in this case against the Second Defendant are not given. The Arbitration Proceedings in this case are discontinued.
3. The First Defendant shall bear the fee for the protest against a lack of powers (jurisdiction) of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic in the amount of CZK 6,500 from its own funds.
4. The fee for the protest against a lack of powers (jurisdiction) of the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic in the amount of CZK 6,500 shall be returned to the Second Defendant.
5. The file shall be returned to the arbitrators for further proceedings.

1. The Plaintiff requires through the action of 8th September 2006, which was delivered to the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (hereinafter also referred to as the "Arbitration Court") on 11th September 2006, that Defendant 1 is ordered to refrain from handling the domain name in any manner, and furthermore that Defendant 2 is ordered to transfer the domain name to the Plaintiff so that the Plaintiff is registered as the domain name holder, and that Defendant 1 is ordered to pay the Plaintiff the costs of the proceedings. The powers of this Arbitration Court to deal with and decide in this case are based according to the Plaintiff on art. 18.1 of the Rules for registration of domain names in the .cz domain.

Both defendants raised objections against a lack of powers of the Arbitration Court to deal with and decide this case.

2. Defendant 2 stated that it is not a holder of the domain name and therefore the provision of art. 18 of the Rules does not apply to it; the Board found out from the wording of art. 18 par. 18.1. of the Rules that this statement of Defendant 2 is correct. As it was not claimed and proven that Defendant 2 concluded an arbitration contract with the Plaintiff in favour of the Arbitration Court in any manner, the powers of this Arbitration Court for the dispute between the Plaintiff and Defendant 2 are not given and the protest against a lack of powers lodged by this Defendant was admitted. Nevertheless it may be noted in this context that nothing prevents the Second Defendant from complying with the powers of the Arbitration Court voluntarily.

3. Defendant 1 declared in its petition of 7th November 2006 that he did not agree, as a matter of principle, with the fact that the disputable points concerning the domain should be dealt with in arbitration proceedings and lodged a protest against a lack of powers of this Arbitration Court. He states that Defendant 1 could not, by agreement with the Rules, conclude a valid arbitration contract

pursuant to the Act on arbitration proceedings and on exercise of arbitration awards, No. 216/1994 Coll. (hereinafter also referred to as the "Act") with the Plaintiff and an arbitration contract was not concluded even by the procedure according to section 276 et seq. of the Commercial Code.

4. As for the issue of the possibility to conclude an arbitration contract on the basis of the so-called public arbitration offer in art. 18 of the Rules, the Board took into account that the provision of art. 18 of the Rules for a public arbitration offer is formulated so that the holder of a domain name (hereinafter also referred to as the "Holder") shall comply with the powers of this Arbitration Court if a third person, i.e. any third person, shows his will to the Holder to comply with the powers of this Arbitration Court by initiating a dispute in writing to be held before this Arbitration Court.

5. The Rules for registration of domain names in the .CZ domain, version 20060101, which came into effect on 1st January 2006 (hereinafter referred to as the "Rules"), stipulate the rules for registration and delegation of the so-called domain names in the Internet network within the .cz domain in Article 1. In addition to these rules, there are also the so-called LRR rules (Rules for registration of domain names through the so-called last resort registrars) and the business conditions of individual registrars regulating further legal relations concerning the domain names and their registration that are not regulated by the Rules. Legal relations connected with domain names are createdby their registration on the basis of article 3 of the Rules; the written consent of the applicant for registration with the current (effective) version of the Rules is a condition for successful registration according to article 3.2 of the Rules. This consent is obtained according to the Rules even if the current (effective) wording of the Rules has been accepted by the applicant for registration in a manner clearly indicating his consent with the content of the Rules. The written form of communication also includes any communication performed through telegraphic or electronic means if they enable the content of the communication to be captured and the persons who performed the communication to be identified.

The existence of the consent may be verified on the basis of the Rules (article 3.5 of the Rules), firstly for the needs of the CZ.NIC association, secondly for the needs of a court, an arbitration court or another state authority for the purposes of judicial, arbitration, administrative, criminal or any other proceedings.

6. For completeness, it should be stated that the Rules also regulate arbitration proceedings in article 17.4 of the Rules, which deals with settlement of disputes connected with the domain names in the case of disputes between the CZ.NIC association and a domain name holder if the dispute concerns its domain name, which is not this case, and therefore the Board of the Arbitration Court did not deal with it any longer although the wording of this arbitration clause favours this Arbitration Court without any doubt.

7. For the purposes of settlement of all disputes concerning domain names, the Rules contain the provision of article 18 - the so-called "Public arbitration offer", as the second possibility of entering into the arbitration contract in the form of an arbitration clause for other disputes - for property disputes that can be terminated by reconciliation, which have occurred between a third person and the Holder with respect to the Holder's domain name registered in the national database.

8. As for the term "public arbitration offer" used in article 18 of the Rules, the Board of the Arbitration Court reached the following conclusions.

The consent of the parties to arbitration proceedings is typically assumed in the form of an arbitration contract, which can actually have two forms - a contract on an arbitrator to settle a dispute already existing or the so-called arbitration clause to settle certain disputes in the future, which may be quite an independent instrument or, as a rule, forms a part of a certain contractual basis of legal relationships between the affected parties.

Nevertheless the nature of legal regulations for arbitration proceedings does not specify, in either case, any requirements for the form of the arbitration contract other than those specified in section 3 of the

Act. Issues not regulated thereby must be - with regard to the general rules for interpretation in the field of private law - interpreted according to the general rules contained in the relevant part of the Civil Code on conclusion of contracts.

An arbitration contract is therefore generally concluded by consensus of the contracting parties, which is achieved by complete and unconditional acceptance of the offer to conclude an arbitration contract. This offer (proposal to conclude an arbitration contract) may then be addressed both to a particular entity and to an indefinite group of potential parties to the relevant dispute. As soon as the given third person - a party to the relevant dispute - is informed about this offer, the offer (proposal) complies with general requirements for conclusion of contracts pursuant to section 43a of the Civil Code and thus a perfect arbitration contract with a given content is concluded through the procedure according to article 18 of the Rules.

At the same time it follows from the provision of article 18 of the Rules that the Holder's offer is irrevocable - therefore it lasts for the whole period of the relevant domain name registration and this offer may be accepted by the relevant third person for the whole period.

Article 18 of the Rules then contains an irrevocable proposal to conclude an arbitration contract with an exactly defined content (determination of the subject matter of the arbitration contract), which is intended for a group of people not specified in greater details (it is therefore intended for the general public). No matter how more usual a "private" proposal to enter into an arbitration contract, i.e. draft intended for an individual entity, may be, the need for a "public arbitration offer" (public proposal to conclude an arbitration contract) as an effective tool supporting an effective alternative settlement of the given kind of disputes may be expected in connection with the nature of certain potential disputes (including disputes concerning domain names).

The term used in the headline of article 18 of the Rules - "public arbitration offer" may be deemed a suitable designation of this proposal (although it might be better to use the term "public arbitration offer" or "public arbitration proposal" from the viewpoint of the language and feeling).

9. The consent granted by the domain name holder as a party to such a dispute with its settlement by an arbitration court is given by its agreement within it application for registration of the domain name; the consent is irrevocable according to article 18.1 of the Rules (it is therefore a necessary and lasting condition for its registration and will cease to exist at the same time the registration ceases to exist according to article 8 of the Rules).

In the case of a third person, such an entity may not be forced to comply with arbitration proceedings; it may only comply with such proceedings within an arbitration contract. At the same time, article 18.1 of the Rules contains a possibility defined in an unambiguous and comprehensible manner how a third person may grant its consent to comply with arbitration proceedings. The Holder's obligation shown in article 18.1 of the Rules must be considered to be an irrevocable offer intended for potential third persons (who could have disputes specified in this article with holders in the future) to conclude an arbitration contract - contract on an arbitrator pursuant to section 2 par. 3 point a) of the Act; as for the form, it complies with the requirement of section 3 par. 1 of the Act.

The given provision of the Rules allows the third person intending to entrust the dispute concerned to the Arbitration Court to express this in any suitable manner while it is shown by way of example that the third person may do that by filing a written action with the Arbitration Court ("by initiating the proceedings in writing") in the given case. In the case of a dispute falling within the scope of the aforementioned public arbitration offer, this act done by the third person may be unambiguously deemed to be its written consent with the relevant arbitration proceedings and therefore to be acceptance of the proposal to conclude an arbitration contract in the form of a contract on an arbitrator, which fully complies with section 3 of the Act.

10. According to the legal opinion of the Board of the Arbitration Court the holder therefore complies

with the powers of this Arbitration Court irrevocably and publicly (according to its rules published in Obchodním věstník - Commercial Journal), namely in the case of a property dispute with respect to which reconciliation may be reached, in which a third person challenges a holder's domain name registered in an electronic database of domain names within the ".cz" national domain administered by the CZ.NIC association if the third person shows the will to the Holder to comply with the powers of this Arbitration Court in the given case, especially if it initiates such a dispute in writing at this Arbitration Court. None of the parties thereby waives its right to propose that a civil court should issue a preliminary measure.

11. The Board of the Arbitration Court therefore found out that a valid arbitration contract in favour of this Arbitration Court had been concluded with respect to this dispute in the relationship between the Plaintiff and Defendant 1. The protest against a lack of powers lodged by Defendant 1 could not be admitted. Therefore the decision contained in the statement of this resolution was made.

12. At the same time the Board also decided according to section 3 of the Rules for costs of arbitration proceedings that form an annex to the Rules of the Arbitration Court on the costs of the proceedings concerning the protest against lack of jurisdiction of the Arbitration Court.

According to section 3 par. 1 of these Rules the party lodging a protest against lack of jurisdiction (lack of powers) of the Arbitration Court is obliged to pay the fee in the amount of 50% fee for the arbitration proceedings according to tariff schedule.

Each defendant paid the fee for the protest against a lack of powers (jurisdiction) of the Arbitration Court in the amount of CZK 6,500.

It applies according to section 3 par. 2, 3 of the Rules for costs of arbitration proceedings that if the protest against lack of jurisdiction is admitted, the Arbitration Court will return the fee paid by the party that has lodged the protest to that party and if the protest against lack of jurisdiction is dismissed the fee will not be returned.

Therefore the Board of the Arbitration Court decided that the First Defendant shall bear the fee for the protest against a lack of powers (jurisdiction) in the amount of CZK 6,500 from its own funds while the fee in the amount of CZK 6,500 is returned to the Second Defendant

The arbitration tribunal shall be bound by the resolution of the Board on the costs of the proceedings on powers (jurisdiction) according to section 3 par. 5 of the Rules for the costs of arbitration proceedings as a whole.

13. With respect to its decision by which the protest lodged by the First Defendant was dismissed the Board of the Arbitration Court returned the file to the arbitration tribunal for further proceedings in the case.

While the decision is being studied, it is necessary to take into account the fact that the decision contains not only the court's statement itself and its justification but also a summary of claims made by individual parties while the court did not have to deal with some of the claims at all (e.g. while ordering a preliminary measure) and these claims only represent the legal opinion of the relevant party and not the conclusion reached by the court.

The decision made by the court cannot apply automatically to other cases (although similar with regard to the facts of the case) and the association CZ.NIC recommends that a particular case should be consulted with experts on domain names and with lawyers.