

Western NIS Enterprise Fund

v.

Ukraine

(ICSID Case No. ARB/04/2)

ORDER

After hearing the parties, and considering their written submissions concerning proper notice of the claim, the Tribunal now decides and orders as follows:

1. The claim put forward by the Claimant ("Claim") falls within the scope of the United States-Ukraine Bilateral Investment Treaty ("BIT").
2. The BIT refers to ICSID arbitration.
3. The present Tribunal has been properly constituted to deal with the Claim.
4. The Tribunal has examined the objection raised with respect to the failure of proper notice under the BIT.
5. Proper notice is an important element of the State's consent to arbitration, as it allows the State, acting through its competent organs, to examine and possibly resolve the dispute by negotiations.
6. Proper notice of the present claim was not given.
7. This conclusion does not, in and of itself, affect the Tribunal's jurisdiction. The Claimant should be given an opportunity to remedy the deficient notice. On the other hand, the proceedings should not be indefinitely suspended.
8. Accordingly, the Tribunal invites the Claimant to (A) furnish evidence within 30 days of this Order that it has given proper notice to the Respondent, and (B) indicate to the Tribunal within 30 days + 6 months, if the Claimant wishes to pursue the Claim. The proceedings will be suspended during 6 months from the date of any proper notice furnished to the Tribunal in accordance with (A), unless both sides agree to reactivate the proceedings earlier.
9. Unless each of the steps (A) and (B) are fulfilled in the period stated, the Tribunal will dismiss the Claim.
10. The present Order is without prejudice to the Respondent's other jurisdictional objections, with respect to which the Tribunal's decision will be issued in due course, provided that steps (A) and (B) are fulfilled in the period stated.

.....*signed*.....
Rodrigo Oreamuno
President

.....*signed*.....
Jan Paulsson

.....*signed*.....
Michael Pryles

.....March 16, 2006.....
Date