

Serbia held liable over copper complex



The dispute related to a major metallurgical and mining complex in the Serbian town of Bor (Credit: RTB Bor)

Sebastian Perry
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A Greek industrial conglomerate says it has won around US\$40 million in a treaty claim against Serbia relating to a frustrated deal with a state-controlled copper mining and smelting company.

Mytilineos Holdings announced today that it had prevailed in a claim heard at the Permanent Court of Arbitration under Greece's 1997 bilateral investment treaty with the former Yugoslavia.

GAR understands that the US\$40 million awarded includes interests and 75% of the claimant's legal and arbitration costs.

An UNCITRAL tribunal seated in Geneva issued the award, which has yet to be published. CMS partner **Klaus Sachs** of Germany chaired the panel, sitting with King & Spalding's **Doak Bishop** as the claimant's appointee and Serbian academic **Mirko Vasiljević** appointed by his government.

Mytilineos lodged the claim in 2013, reportedly seeking as much as US\$100 million. The dispute relates to agreements it signed in the late 1990s with RTB Bor, a copper mining and smelting company at that time owned by the Federal Republic of Yugoslavia (now Serbia). The agreements provided for cooperation in RTB Bor's mineral extraction and metallurgy activities ahead of the company's anticipated privatisation.

According to Mytilineos, RTB Bor began defaulting on its obligations to make payments and provide metal in 2004, despite having received significant advance payments, pre-financing and copper ore from the Greek company.

RTB Bor entered restructuring in that year, which the government said was part of the privatisation process and meant it did not have to pay its creditors. However, that privatisation has yet to take place 13 years later, during which period RTB Bor has continued to operate and accept investments from third parties.

Mytilineos says the government adopted measures that prohibited RTB Bor from meeting its existing obligations without government approval and barred creditors from pursuing enforcement measures in the local courts.

According to today's press release, the tribunal held that Serbia had indirectly expropriated Mytilineos' investment without compensation and had frustrated its legitimate expectations through a series of legislative measures between 2004 and 2012 that granted RTB Bor immunity from enforcement under the "pretext" of a restructuring and privatisation that never occurred.

Mytilineos relied on a co-counsel team including Moussas & Partners in Athens, Three Crowns in Paris, BDK Advokati in Belgrade and **Tariq Baloch** of 3 Verulam Buildings in London.

Serbia was represented by Karanović & Nikolić in Belgrade, as well as **Petar Djundić** of Novi Sad School of Law.

It marks the second time Mytilineos has brought a treaty claim over measures affecting RTB Bor. The investor filed its first claim in 2004, which went before a PCA tribunal chaired by Austrian academic **August Reinisch**. In a 2009 award, the panel held that the dispute had yet to reach the level of a BIT breach, noting that Serbia had indicated it intended to complete RTB Bor's privatisation and satisfy its creditors soon.

The tribunal in the second case was formed after Mytilineos successfully challenged the state's original appointee, Serbian legal scholar **Tibor Varady**, on the grounds that he had previously held positions within the government or as counsel to Serbia.

Mytilineos Holdings SA v The Republic of Serbia (2013)

Tribunal

- Klaus Sachs (President) (Germany)
- Doak Bishop (US) (appointed by the claimant)
- Mirko Vasiljević (Serbia) (appointed by Serbia)*

* replacing **Tibor Varady** (Serbia) following a successful challenge by the claimant

Counsel to Mytilineos Holdings

- Moussas & Partners

Partner **Nicholas Moussas** and associate **Georgia Florou** in Athens

- Three Crowns

Partner **Georgios Petrochilos** and associates **Ben Prewett** and **Michail Risvas** in Paris

- **Tariq Baloch** of 3 Verulam Buildings in London
- BDK Advokati

Tijana Kojović, Maria Doci and **Andja Savić** in Belgrade

Counsel to the Republic of Serbia

Karanović & Nikolić

Dejan Nikolić, Milan Lazić and Senka Mihaj in Belgrade

- **Petar Djundić** of Novi Sad School of Law

Mytilineos Holdings SA v The State Union of Serbia and Montenegro; The Republic of Serbia (2004)

Tribunal

August Reinisch (President) (Austria)

Anna Mantakou (Greece)*

Gašo Knežević (Serbia)**

* Appointed following the death of Stelios Koussoulis (Greece) in 2007

** Appointed following resignation of Dobrosav Mitrović (Serbia) for health reasons

Counsel to Mytilineos Holdings

- Moussas & Tsibris (later Moussas & Partners)

Nicholas Moussas and Efstratios Voulgaridis in Athens

Counsel to Serbia

- Law Office Milošević

Radomir Milošević in Belgrade

- Law Office Paunović

Miroslav Paunović in Belgrade