Foreign Direct Investment

International Arbitration Moot

Global Orals, 7-10 November 2019

University of Miami, School of Law

The 2019 case was elaborated by Vishesh Bhatia, Marilena Chrysanthakopoulou, Veronika Lakhno, Alina Papanastasiou, and Alexandra Samsonova, under the supervision of the FDI Moot’s Directors and Advisory Board.
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Clarifications

Registered teams may submit requests for clarification of the case, e.g. of factual ambiguities, if the States have ratified a particular convention, etc. Please strictly observe the instructions for clarification requests on the website.
International Centre for Settlement of Investment Disputes, Secretariat
1818 H Street, N.W.
MSN J2-200
Washington, D.C. 20433
U.S.A.

Phone No. (202) 458-1534
Fax No. (202) 522-2615
E-mail: ICSIDsecretariat@worldbank.org

cc: Republic of Tyrea, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Telecommunications, Information Technology and Mass Media, Tyrean Communications Authority

Request for Arbitration

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11253 Cellophane City
Federation of Novanda
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info@friendslook.nov

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224 San Magnolia str.
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Union of Kitoa
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A power of attorney is attached [intentionally not reproduced here].

Respondent
Republic of Tyrea

Dr. Maz Kanata
Procurator of the Treasury, Ministry of Finance
Resistance Street 3
9668 Takodana
Republic of Tyrea
T: / F: +88 785 232 446
m.kanata@mof.gov.ty
Submission of the Dispute to Arbitration

1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (“ICSID Convention”), FriendsLook plc (“FriendsLook”), which is a private company incorporated under the laws of the Federation of Novanda and Whistler Inc. (“Whistler”) and SpeakUp Media Inc. (“SpeakUp”), incorporated under the laws of the Union of Kitoa (the “Claimants”) hereby initiate arbitration against the Respondent, the Republic of Tyrea (“Tyrea” or the “Respondent”).

Terms of the Arbitration Agreement

2. By submitting this Request for Arbitration, the Claimants accept the standing offer made by Tyrea to arbitrate investment disputes with investors from Kitoa and Novanda, which is expressed in Article 9 of the Agreement between Tyrea and Novanda for the Promotion and Reciprocal Protection of Investments (Tyrea-Novanda BIT), dated 28 March 2000, and Article 9 of the Agreement between Tyrea and Kitoa for the Promotion and Reciprocal Protection of Investments (Tyrea-Kitoa BIT), dated 20 January 2001, as set forth below:

   Article 9 - Settlement of Disputes Between one Contracting Party and Nationals or Companies of the other Contracting Party (Tyrea-Novanda BIT):
   “Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to the International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.”

Article 9 - Settlement of Disputes Between one Contracting Party and Nationals or Companies of the other Contracting Party (Tyrea-Kitoa BIT)

“Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to the International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.”

3. The dispute settlement Articles, as well as the entire Tyrea-Novanda and Tyrea-Kitoa BIT, are identical. FriendsLook is an investor within the meaning of Article 1.1 of the Tyrea-Novanda BIT. Whistler and SpeakUp each qualify as an “investor” as defined under Article 1.1 of the Tyrea-Kitoa BIT.

Summary of the Dispute

4. FriendsLook is an international social media platform, incorporated in, and in accordance with the laws of Novanda. Considered as the most popular and widespread of its kind, FriendsLook counts
hundreds of millions of accounts and has a strong presence in more than 100 countries worldwide. In January 2015, it decided to expand its operations to Tyrea. In that regard, it also established a local office, including servers, in order to optimize the function of the platform for local users.

5. Whistler is another global network, constituted in accordance with the laws of Kitoa, that has gained popularity over the course of the last 8 years. It provides users with a platform to express their thoughts and ideas through short texts on a wide range of subjects, from politics, business and the economy, to technology, culture and lifestyle. In June 2015, Whistler launched a localized version of its website in Tyrea, and staffed a Tyrean office for its local branch.

6. SpeakUp is a Kitoan social network website founded in 2004 as a viral platform following the “blog” approach of expression. SpeakUp hosts more than 400 million different blogs worldwide. As a strategic step to its international expansion, SpeakUp expanded its operations to Tyrea in June 2015, staffing a small office at Tyrea’s capital for back-office and customer support, as well as hiring technology experts to ensure the proper functioning of the platform.

7. Since the very beginning of their operations in Tyrea, the Claimants’ social media platforms have been responsibly facilitating communications in Tyrea, as well as contributing to the growth of the Tyrean economy. That is why the Claimants were taken by surprise when Respondent proceeded with the unforeseeable measure of blocking the Claimants’ operations in the country.

8. In December 2017, Respondent started to make public statements alleging that its inability to control ethnic tension within its own territory was partly caused through the perpetrators’ use of the Claimants’ social media platforms for spreading hate speech and coordinating violent activities.

9. Respondent then enacted Law No. 0808-L dated 12 January 2018 [CLAIMANTS’ EXHIBIT 1, CLAIMANTS’ EXHIBIT 2], which provided that social networks operating in Tyrea should develop and implement an algorithm in order to filter potentially prejudicial content, and to provide access to users’ personal details and messaging.

10. In view of Law No. 0808-L, the Claimants immediately took action to stop such incidents and promptly collaborated with Respondent’s authorities in order to create an algorithm that would further improve the Claimants’ ability to detect and block hate speech. In fact, pursuant to Decree No. 0578/201-D, Respondent granted the Claimants a period of 60 days for the development and implementation of the algorithm.

11. Thirty days into this period and without prior notice and contrary to the original announcement relied on by the Claimants, Respondent slashed the 60-day period to 45 days by way of Decree No. 0599/201-D dated 11 February 2018 [CLAIMANTS’ EXHIBIT 3]. Despite the negative impact that this change had on the Claimants efforts to develop the algorithm, the Claimants continued to work in order to meet the new deadline.

12. Although a first version of the algorithm was ready and implemented within the new deadline, Respondent proceeded with the blocking of the Claimants’ social media platforms [CLAIMANTS’ EXHIBIT 5], with an order to the national internet service providers, following the Tyrean
Communications Authority’s Ordinances of 28 February, 1 March and 2 March 2018 [CLAIMANTS’ EXHIBIT 4]. This came as a major surprise considering that Respondent’s officials, including the Minister for Telecommunications, Information Technology and Mass Media, were aware of the time the development of the algorithm would take, and reduced the deadline nonetheless [CLAIMANTS’ EXHIBIT 6]. It also must be underlined that Respondent did not block all social networks of the same type active in its territory, but only those of the Claimants, conduct that does not conform with the provisions of the respective BITs invoked in this Request for Arbitration.

13. These measures did not damage only the Claimants but also the very freedom of expression in Tyrea. Coming out of a period of internet censorship and strict government control over the web, Tyrea’s government promised to open the door to the possibilities of the internet and ensure its freedom. Instead, Respondent did everything in its powers to tailor the internet to its needs and interests; it initially attempted to “block” anything that would go against the state’s perception of “morality” and to gain access to user’s personal data and private messages. It ultimately chose to completely get rid of those international platforms that freely entertained all voices, anti-government or not, while conveniently sparing a state-made platform from the same fate.

14. What is more, by virtue of Respondent’s measure, the Claimants were deprived of significant assets, including their ability to generate revenue through the sale of advertising space, considering that the Claimants’ revenue is ad-driven and heavily depends on their web traffic (CPM - cost per thousand impressions), as well as payments for ad blocking and promotional content. In fact, the Claimants have lost all users residing in Tyrean, despite doing their best to expeditiously implement the new Tyrean legislation and incurring significant costs in this compliance process. Furthermore, the Claimants were all working throughout 2017 on the development of new features and products for their social media platforms, tailor-made for Tyrean users, which would have been launched to the market in 2018. Due to the Respondent’s actions, all these efforts and spent capital have gone to waste.

15. In addition, the Claimants were also deprived of the opportunity to proceed with market expansion in the region by utilizing their dominant and physical presence in the Tyrean market to expand its activities to neighboring markets. Since late 2016, the Claimants were closely negotiating with officials of the neighboring states, Alcadia and Larnacia, whose markets and potential user bases are similar to those of Tyrea, but which still impose stringent requirements in respect of global online services in general and social networks in particular. After successful lobbying and campaigning in those countries, and seeing the operation of the platforms in Tyrea, discussions with officials of Alcadia and Larnacia showed extremely positive signs. Given the encouraging statements by these officials, the Claimants started actively planning their expansion to those markets, incurring relevant costs. After the blockage of the platforms by Respondent, negotiations were brought to a standstill;
representatives of both neighboring countries informed the Claimants that following the recent events, it would not be prudent to allow them to operate in their countries.

16. In support of their damages claim, the Claimants are submitting a detailed expert report on the damages incurred [CLAIMANTS’ EXHIBIT 7].

17. All the above, contributed to the utter frustration of the Claimants’ investments in Tyrea.

185 Request for Relief

18. The Claimants hereby request that the Arbitral Tribunal:

1. find that the Republic of Tyrea has expropriated Claimants’ investments by the implementation of the TCA’s ordinance and the consequent blocking of their websites since 28 February 2018, pursuant to Article 6 of the Tyrea-Kitoa BIT and Tyrea-Novanda BIT;

2. find that the Republic of Tyrea has breached the Fair and Equitable Treatment standard under Article 3.1 of the Tyrea-Kitoa BIT and Tyrea-Novanda BIT;

3. award the Claimants compensation in the amount of no less than 69,134,875 USD for FriendsLook plc, 26,760,460 USD for Whistler Inc., and 27,094,000 USD for SpeakUp Media Inc., plus interest as of the date of issuance of the award;

4. find that Claimant is entitled to compensation by Respondent of all costs and fees related to these proceedings.

Procedural Matters

19. In view of the above, the Claimants request ICSID to appoint a tribunal of three (3) arbitrators. The Claimants hereby nominate Dr. Henry Jekyll as one of the arbitrators.

20. The Claimants further request that the proceedings be conducted in English, with the English versions of the BITs prevailing and official versions of the relevant legislation being also available in English.

205 Confirmation of Delivery to Respondent

Courier receipts are attached [intentionally not reproduced here].

For and on behalf of Claimants,

Dr. Paul Johnstone

Johnstone & Associates
THE REPUBLIC OF TYREA

THE PRESIDENT’S OFFICE

Decree No. 0578/201-D
of 12 January 2018

On Promulgation of the Law No. 0808-L Amending the Law on Media and Information

12 January 2018

Takodana, Tyrea

By the authority vested in me as the President of the Republic of Tyrea,
Honoring the will and the decision of the representatives of the People of Tyrea in the
National Parliament of the Republic of Tyrea,

I hereby:

1. Assent to and sign into force the Law No. 0808-L Amending the Law on Media and
Information as attached hereto, which shall be officially published in the Parliamentary
Journal on the following day and enter into force immediately upon publication.

2. Pursuant to Article 3 of the Law No. 0808-L Amending the Law on Media and Information,
decree that the period for procuring compliance with the requirements of the amended
Law on Media and Information shall be 60 calendar days after its entry into force.

[SIGNED]

Laetitia Solare

President of the Republic of Tyrea

[Annex: Law No. 0808-L Amending the Law on Media and Information]
[intentionally not reproduced here]
CLAIMANTS’ EXHIBIT 2
(official translation in English from the Tyrean language)

- THE PARLIAMENTARY JOURNAL -

12 January 2018

Law No. 0808-L Amending the Law on Media and Information

Adopted by the National Assembly
Approved by the President of the Republic of Tyrea

1. Law No. 1125-L on Media and Information of 10 September 2013 shall be supplemented with a new Article 51bis to read as follows:

"Article 51 bis Social Network Filtering and Control

1. Every Social Network shall develop and implement an effective algorithm suitable for its scale of operations (including, but not limited to, the audience size and amount of content published) to ensure the efficient filtering and blocking of Content that is likely to prejudice public order and/or morality, to incite disrespect for the laws in force, and to incite animosity towards any political, social, racial, ethnic and other groups.

2. Every Social Network shall ensure that any new Tyrean user provides to it true and accurate Personal ID card details (such details shall be protected as personal data in accordance with the personal data legislation of the Republic of Tyrea), including the full name, date of birth, and Personal ID card number. Every Social Network shall ensure that its existing users provide the Personal ID card details referred to in this paragraph (2) within the deadline set for compliance with this Article 51bis by the decree of the President of the Republic of Tyrea.

3. Every Social Network shall promptly provide access to the competent authorities of the Republic of Tyrea at their justified official request:
   a. the Personal ID card details of the Tyrean users collected in accordance with paragraph (2) above; and
   b. the correspondence between its users, if private messaging is allowed by the relevant Social Network.

4. The costs of the development and implementation of the algorithm referred to in paragraph (1) of this Article 51bis above shall be partially subsidised by tax benefits in accordance with Article 404 of the Tyrean Tax and Duties Code, but in any event such tax benefit to be deducted from the revenue tax payable by the relevant Social Network shall not exceed 20 per cent. of the relevant documented expenses.

5. Any Social Network failing to comply with the requirements of this Article shall be liable in accordance with the provisions of the Tyrean Penal Code."

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2. Article 117 of the Tyrean Penal Code shall be supplemented with a new paragraph (s) to read as follows:

"Article 117. Offences relating to misuse of the media

(s) Failure to comply with the requirements of Article 51 bis of the Law on Media and Information shall result in the following penalties:

(i) a fine in the amount of 50,000 - 100,000 TKC (Tyrean ke-tse); and/or
(ii) temporary or permanent blocking of the relevant Network, depending on the gravity of, and possibility to, cure the particular transgression,

such penalties to be imposed by the officers of the Tyrean Communications Authority."

3. The deadline for compliance with paragraphs (1) through (3) of the new clause 51 bis under the amended Law on Media and Information shall be determined by the decree of the President of the Republic of Tyrea.

4. This Law shall enter into force immediately upon its publication in the Parliamentary Journal.

[SIGNED]

Laetitia Solare
President of the Republic of Tyrea
THE REPUBLIC OF TYREA

THE PRESIDENT’S OFFICE

Decree No. 0599/201-D of 11 February 2018

On Amendment of the Decree No. 0578/201-D of 12 January 2018

11 February 2018

Takodana, Tyrea

By the authority vested in me as the President of the Republic of Tyrea, including, the extraordinary powers to amend the operative decrees granted by Article 17 of the President Act,

Desiring to eliminate the threat to the public order and national peace and security,

I hereby:

1. Declare that Decree No. 0578/201-D of 12 January 2018 shall be amended and that the period for procuring compliance with the requirements of the Law on Media and Information as amended by the Law No. 0808-L shall be moved forward to 28 February 2018.

[SIGNED]

Laetitia Solare

President of the Republic of Tyrea
COMMUNICATIONS AUTHORITY OF THE REPUBLIC OF TYREA

370  ORDINANCE

Dated: 28 February 2018

The Communications Authority of the Republic of Tyrea, pursuant to Article 117(s) of the Penal Code of the Republic of Tyrea, herewith orders and implements the immediate blocking of the following social networks for breach of Article 51 bis of the Law on Media and Communications of the Republic of Tyrea, pending further notice:

FriendsLook plc (www.friendslook.com).

__________________
ANTONIO DE SILVA,
Director, Communications Authority of the Republic of Tyrea

CLAIMANTS’ EXHIBIT 4 [continued]
(official translation in English from the Tyrean language)

COMMUNICATIONS AUTHORITY OF THE REPUBLIC OF TYREA

Dated: 1 March 2018

ORDINANCE

The Communications Authority of the Republic of Tyrea, pursuant to Article 117(s) of the Penal Code of the Republic of Tyrea, herewith orders and implements the immediate blocking of the following social network for breach of Article 51 bis of the Law on Media and Communications of the Republic of Tyrea, pending further notice:

Whistler Inc. (www.whstlr.com).

__________________
ANTONIO DE SILVA,
Director, Communications Authority of the Republic of Tyrea
The Communications Authority of the Republic of Tyrea, pursuant to Article 117(s) of the Penal Code of the Republic of Tyrea, herewith orders and implements the immediate blocking of the following social network for breach of Article 51 bis of the Law on Media and Communications of the Republic of Tyrea, pending further notice:

SpeakUp Media Inc. (www.sp-up.com).

ANTONIO DE SILVA,
Director, Communications Authority of the Republic of Tyrea
CLAIMANTS’ EXHIBIT 6

AFFIDAVIT OF MS. SARAID PARLANTE

I, Saraid Anne Parlante, of SpeakUp Media Inc., residing at 12 Blue Jay Way, Neverland, Kitoa,

MAKE OATH AND SAY AS FOLLOWS:

1. I am the Regional Vice-President of SpeakUp Media Inc., a corporation based in Kitoa.
2. The facts and matters set out in this Affidavit are within my own knowledge, and are true, or they are known to me from the sources which I identify below, and are true to the best of my knowledge and belief.
3. I was appointed as the Regional Vice-President of SpeakUp Media Inc., in 2012. Since that time, we have been focusing on emerging markets and exploring new opportunities for developing our business.
4. Tyrea has been considered by SpeakUp Media Inc., as a potential market for a long time; however, one of the most substantial deterrents was the lack of modern regulation of the media. When in 2013 Tyrea passed the new Media Law, our analysts undertook a thorough analysis of the legal framework and found it reasonably satisfactory. The statements by Tyrean public figures also strengthened our belief in a fruitful cooperation in the future.
5. When the new law 0808-L came into force, establishing additional requirements for social networks, which would be applicable to SpeakUp, we were gravely concerned with the newly imposed duty to allow the Tyrean Government access to correspondence between users and to personal data of the users. Considering Tyrea’s longstanding history of censorship and the damage identification by the state may do to anyone expressing views differing from the those supported by the state, we could not but perceive this new requirement as a significant threat to our long-held belief in the importance of protecting free speech.
6. From 1 p.m. to 2 p.m. on 28 January 2018, I attended an official meeting with the Minister of Telecommunications, Information Technology and Mass Media of the Republic of Tyrea, Mr. Fredrik Woodlant.
7. In the course of the meeting I raised the implications of user identification. I also expressed my concerns that the algorithm was complicated to develop and required time and testing. I told Mr. Woodlant that the existing deadline was barely sufficient to ensure the algorithm works properly. Mr. Woodlant responded that, having worked in IT for ten years prior to his appointment, he was certainly aware of that and made sure that a feasible deadline was included into the law. He, however, added that “what is written cannot be changed” and expressed hope that international social networks would mobilise their “vast forces” to meet the deadline, or else, to use his expression, they “would not be stopped by the big names to immediately block any social network that fails to comply with the law”.

SWORN BY

[SIGNED]
[Saraid Anne Parlante] DATE: 07 June 2018

BEFORE ME, this 07th day of June 2018, at Neverland, Kitoa

[SIGNED]
Thoth Mercury
SOLICITOR/COMMISSIONER
ALONZO & RODRIGUEZ

DAMAGES REPORT FOR THE CASE

FriendsLook plc
Whistler Inc.
SpeakUp Media Inc.

v.

The Republic of Tyrea

Submitted pursuant to the ICSID Rules of Arbitration

Submitted on 29 June 2018
My name is Alfonso Alonzo and I am the Managing Director in the Global Disputes & Investigations practice of Alonzo & Rodriguez LLC. I am based in our Pesos office at 3288 Tower Avenue, Pesos, 1125 53, Aldovia.

I am a Fellow of the Institute of Chartered Accountants in Aldovia, a Chartered Fellow of the Chartered Institute for Securities and Investment, a Fellow of the Royal Aldovian Statistical Society and a Member of the Academy of Experts.

Instructions

I have been instructed by FriendsLook plc, Whistler Inc., and SpeakUp Media Inc. (the “Claimants”) to provide an expert witness report addressing the damages suffered by the Claimants on the basis that the Claimants’ investments were affected by measures adopted by the Republic of Tyrea.

Information relied upon

The information and documents I have relied upon are set out in the footnotes to this report [intentionally omitted].

If further information is produced and brought to my attention after service of this report, I reserve the right to revise my opinions as appropriate.

I am an expert witness, not a witness of fact. Except to the extent set out in this report, I have relied upon the documents and information provided to me as being accurate and genuine. To the extent that any statements or evidence that I have relied upon are not established by the Tribunal as accurate, it may be necessary to review my conclusions.

Direct Damages

In order to start their operations in the Republic of Tyrea in 2015, the Claimants established local branches. The costs of establishing local branches are numerically elaborated below:

<table>
<thead>
<tr>
<th></th>
<th>FriendsLook plc</th>
<th>Whistler Inc.</th>
<th>SpeakUp Media Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market research</td>
<td>$ 347,000.00</td>
<td>$ 153,000.00</td>
<td>$ 165,000.00</td>
</tr>
<tr>
<td>Website localisation</td>
<td>$ 746,000.00</td>
<td>$ 589,000.00</td>
<td>$ 632,000.00</td>
</tr>
<tr>
<td>Legal &amp; regulatory</td>
<td>$ 280,000.00</td>
<td>$ 220,500.00</td>
<td>$ 220,000.00</td>
</tr>
<tr>
<td>compliance Induction marketing campaign</td>
<td>$ 772,000.00</td>
<td>$ 468,000.00</td>
<td>$ 370,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 624,000.00</td>
<td>$ 330,000.00</td>
<td>$ 316,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$ 2,769,000.00</td>
<td>$ 1,760,500.00</td>
<td>$ 1,703,000.00</td>
</tr>
</tbody>
</table>

Lost Profits

(a) The Claimants’ Revenue Streams

The Claimants are social media platforms that possess tangible assets in the Republic of Tyrea in the form of branch offices, and employ staff locally.
The Claimants have international reach and count millions of users worldwide. The revenue streams of the Claimants include:

- the sale of advertising space
- the sale of promotional content
- personalized content and advertising blocking / selection for a fee paid by the users

Revenues in Tyrea are numerically elaborated below:

<table>
<thead>
<tr>
<th>Company</th>
<th>2016</th>
<th>2017</th>
<th>Projection for 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FriendsLook plc</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R.1.A Advertising space</td>
<td>$9,000,346.00</td>
<td>$16,500,000.00</td>
<td>$29,250,000.00</td>
</tr>
<tr>
<td>R.2.A Promotional content</td>
<td>$3,300,000.00</td>
<td>$6,520,000.00</td>
<td>$15,450,000.00</td>
</tr>
<tr>
<td>R.3.A Personalized content</td>
<td>$2,000,000.00</td>
<td>$3,510,000.00</td>
<td>$7,320,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$14,300,346.00</td>
<td>$26,530,000.00</td>
<td>$52,020,000.00</td>
</tr>
<tr>
<td><strong>Whistler Inc.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R.1.B Advertising space</td>
<td>$1,745,700.00</td>
<td>$4,758,980.00</td>
<td>$10,780,000.00</td>
</tr>
<tr>
<td>R.2.B Promotional content</td>
<td>$1,000,000.00</td>
<td>$1,945,000.00</td>
<td>$4,345,000.00</td>
</tr>
<tr>
<td>R.3.B Personalized content</td>
<td>$960,500.00</td>
<td>$1,632,800.00</td>
<td>$2,357,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$3,706,200.00</td>
<td>$8,336,780.00</td>
<td>$17,482,000.00</td>
</tr>
<tr>
<td><strong>SpeakUp Media Inc.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R.1.C Advertising space</td>
<td>$1,950,000.00</td>
<td>$4,556,000.00</td>
<td>$10,490,000.00</td>
</tr>
<tr>
<td>R.2.C Promotional content</td>
<td>$1,310,000.00</td>
<td>$2,530,000.00</td>
<td>$5,340,000.00</td>
</tr>
<tr>
<td>R.3.C Personalized content</td>
<td>$900,000.00</td>
<td>$1,430,000.00</td>
<td>$2,223,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$4,160,000.00</td>
<td>$8,516,000.00</td>
<td>$18,053,000.00</td>
</tr>
</tbody>
</table>

(b) Costs per Finance Departments

The Claimants bear costs tied to the physical offices established in Tyrea:

- salaries for technicians
- operational costs (including R&D)
- administrative expenses
- marketing activities
- legal fees

Costs are numerically elaborated below:

<table>
<thead>
<tr>
<th>Company</th>
<th>2016</th>
<th>2017</th>
<th>2018 (until the blocking)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FriendsLook plc</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.1.A Salaries</td>
<td>$400,000.00</td>
<td>$450,000.00</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>C.2.A Operational</td>
<td>$603,678.00</td>
<td>$967,458.00</td>
<td>$674,228.00</td>
</tr>
<tr>
<td>C.3.A Administrative</td>
<td>$96,000.00</td>
<td>$90,000.00</td>
<td>$65,000.00</td>
</tr>
<tr>
<td>C.4.A Marketing</td>
<td>$720,674.00</td>
<td>$767,887.00</td>
<td>$544,897.00</td>
</tr>
<tr>
<td>C.5.A Legal</td>
<td>$300,000.00</td>
<td>$400,000.00</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>C.6.A Taxes</td>
<td>$1,203,456.00</td>
<td>$2,237,000.00</td>
<td>$980,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$3,323,808.00</td>
<td>$4,912,345.00</td>
<td>$2,654,125.00</td>
</tr>
<tr>
<td><strong>Whistler Inc.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.1.B Salaries</td>
<td>$367,000.00</td>
<td>$400,000.00</td>
<td>$179,000.00</td>
</tr>
<tr>
<td>C.2.B Operational</td>
<td>$529,600.00</td>
<td>$734,000.00</td>
<td>$454,890.00</td>
</tr>
</tbody>
</table>
The Claimants’ profits are calculated as follows:

**FriendsLook plc**

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>Projection for 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.1.A Advertising space</td>
<td>$9,000,346.00</td>
<td>$16,500,000.00</td>
<td>$29,250,000.00</td>
</tr>
<tr>
<td>R.2.A Promotional content</td>
<td>$3,300,000.00</td>
<td>$6,520,000.00</td>
<td>$15,450,000.00</td>
</tr>
<tr>
<td>R.3.A Personalized content</td>
<td>$2,000,000.00</td>
<td>$3,510,000.00</td>
<td>$7,320,000.00</td>
</tr>
<tr>
<td><strong>Revenue Subtotal</strong></td>
<td>$14,300,346.00</td>
<td>$26,530,000.00</td>
<td>$52,020,000.00</td>
</tr>
<tr>
<td>C.1.A Salaries</td>
<td>$ 400,000.00</td>
<td>$ 450,000.00</td>
<td>$ 200,000.00</td>
</tr>
<tr>
<td>C.2.A Operational</td>
<td>$ 603,678.00</td>
<td>$ 967,458.00</td>
<td>$ 674,228.00</td>
</tr>
<tr>
<td>C.3.A Administrative</td>
<td>$ 96,000.00</td>
<td>$ 90,000.00</td>
<td>$ 65,000.00</td>
</tr>
<tr>
<td>C.4.A Marketing</td>
<td>$ 720,674.00</td>
<td>$ 767,887.00</td>
<td>$ 544,897.00</td>
</tr>
<tr>
<td>C.5.A Legal</td>
<td>$ 300,000.00</td>
<td>$ 400,000.00</td>
<td>$ 190,000.00</td>
</tr>
<tr>
<td>C.6.A Taxes</td>
<td>$ 1,203,456.00</td>
<td>$ 2,237,000.00</td>
<td>$ 980,000.00</td>
</tr>
<tr>
<td><strong>Costs Subtotal</strong></td>
<td>$3,323,808.00</td>
<td>$4,912,345.00</td>
<td>$2,654,125.00</td>
</tr>
<tr>
<td><strong>PROFIT</strong></td>
<td>$10,976,538.00</td>
<td>$21,617,655.00</td>
<td>$49,365,875.00</td>
</tr>
</tbody>
</table>

**Whistler Inc.**

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>Projection for 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.1.B Advertising space</td>
<td>$ 1,745,700.00</td>
<td>$ 4,758,980.00</td>
<td>$ 10,780,000.00</td>
</tr>
<tr>
<td>R.2.B Promotional content</td>
<td>$ 1,000,000.00</td>
<td>$ 1,945,000.00</td>
<td>$ 4,345,000.00</td>
</tr>
<tr>
<td>R.3.B Personalized content</td>
<td>$ 960,500.00</td>
<td>$ 1,632,800.00</td>
<td>$ 2,357,000.00</td>
</tr>
<tr>
<td><strong>Revenue Subtotal</strong></td>
<td>$3,706,200.00</td>
<td>$ 8,336,780.00</td>
<td>$17,482,000.00</td>
</tr>
<tr>
<td>C.1.B Salaries</td>
<td>$ 367,000.00</td>
<td>$ 400,000.00</td>
<td>$ 179,000.00</td>
</tr>
<tr>
<td>C.2.B Operational</td>
<td>$ 529,600.00</td>
<td>$ 734,000.00</td>
<td>$ 454,890.00</td>
</tr>
<tr>
<td>C.3.B Administrative</td>
<td>$ 75,000.00</td>
<td>$ 74,000.00</td>
<td>$ 53,000.00</td>
</tr>
<tr>
<td>C.4.B Marketing</td>
<td>$ 685,000.00</td>
<td>$ 720,000.00</td>
<td>$ 534,700.00</td>
</tr>
<tr>
<td>C.5.B Legal</td>
<td>$ 231,200.00</td>
<td>$ 245,000.00</td>
<td>$ 60,000.00</td>
</tr>
<tr>
<td>C.6.B Taxes</td>
<td>$ 187,344.00</td>
<td>$ 614,896.00</td>
<td>$ 200,450.00</td>
</tr>
<tr>
<td><strong>Costs Subtotal</strong></td>
<td>$2,075,144.00</td>
<td>$2,787,896.00</td>
<td>$1,482,040.00</td>
</tr>
<tr>
<td><strong>PROFIT</strong></td>
<td>$ 1,631,056.00</td>
<td>$ 5,548,884.00</td>
<td>$15,999,960.00</td>
</tr>
</tbody>
</table>
Pursuant to the Claimants’ projections for 2018, their profit would be as follows: **49,365,875 USD** for FriendsLook plc, **15,999,960 USD** for Whistler Inc., and **16,891,000 USD** for SpeakUp Media Inc.

### Opportunity for Market Expansion and Lost Profits

According to the information that was provided to me, the Claimants were planning to expand to neighboring countries, utilizing their physical presence in the Republic of Tyrea as regional head offices, and proceeding with the hiring of staff (such as developers and managers based in Tyrea to handle all expansion-related activities), legal and administrative expenses for setting-up branches in the neighboring states.

<table>
<thead>
<tr>
<th></th>
<th>FriendsLook plc</th>
<th>Whistler Inc.</th>
<th>SpeakUp Media Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>R&amp;D</td>
<td>$586,000.00</td>
<td>$412,000.00</td>
<td>$352,900.00</td>
</tr>
<tr>
<td>Legal &amp; Administrative</td>
<td>$350,000.00</td>
<td>$287,000.00</td>
<td>$188,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$936,000.00</strong></td>
<td><strong>$699,000.00</strong></td>
<td><strong>$541,400.00</strong></td>
</tr>
</tbody>
</table>

As evidenced by past records, each of the Claimants is a going concern with a demonstrated track record of profitability and experience in foreign market expansion. Applying the DCF method, which should be considered appropriate, the present value of the Claimants’ lost profits is calculated as shown below:

<table>
<thead>
<tr>
<th></th>
<th>FriendsLook plc</th>
<th>Whistler Inc.</th>
<th>SpeakUp Media Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>FriendsLook plc</td>
<td>$17,000,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whistler Inc.</td>
<td>$9,000,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SpeakUp Media Inc.</td>
<td>$8,500,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$34,500,000.00</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For the purposes of the discounting of the amounts, a weighted average cost of capital (WACC) of 5% is applied as the discount rate.
**Summary**

<table>
<thead>
<tr>
<th></th>
<th>FriendsLook plc</th>
<th>Whistler Inc.</th>
<th>SpeakUp Media Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Damages</td>
<td>$ 2,769,000.00</td>
<td>$ 1,760,500.00</td>
<td>$ 1,703,000.00</td>
</tr>
<tr>
<td>Lost Profits in Tyrea</td>
<td>$ 49,365,875.00</td>
<td>$ 15,999,960.00</td>
<td>$ 16,891,000.00</td>
</tr>
<tr>
<td>Expansion Profits</td>
<td>$ 17,000,000.00</td>
<td>$ 9,000,000.00</td>
<td>$ 8,500,000.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 69,134,875.00</strong></td>
<td><strong>$ 26,760,460.00</strong></td>
<td><strong>$ 27,094,000.00</strong></td>
</tr>
</tbody>
</table>

**Interest**

[...]

**Statement of truth**

I confirm that, insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

**Alfonso Alonzo**

Pesos, 29 June 2018
FriendsLook plc, SpeakUp Media Inc., and Whistler Inc.

Republic of Tyrea

Re: FriendsLook plc, SpeakUp Media Inc., and Whistler Inc. v. the Republic of Tyrea
(ICSID Case No. ARB/18/155)

Dear Sir and Madam,

On June 29, 2018, FriendsLook plc, SpeakUp Media Inc., and Whistler Inc. filed with the International Centre for Settlement of Investment Disputes (“ICSID”) a Request for Arbitration against the Republic of Tyrea, supplemented by letter(s) of June 29, 2018 (the “Request”). The Request was registered today and has been assigned ICSID Case Number ARB/18/155. Please find enclosed:

(i) the Notice of Registration required by Rules 6 and 7 of the ICSID Institution Rules;

(ii) copies of the booklet “ICSID Convention, Regulations and Rules” (April 2006);

(iii) the current list of the members of the ICSID Panels of Conciliators and of Arbitrators (Doc. ICSID/10);

(iv) ICSID’s current Schedule of Fees;

(v) the current Memorandum on the Fees and Expenses of ICSID Arbitrators; and

(vi) a note explaining the provisions of the ICSID Convention and ICSID Arbitration Rules regarding the constitution of the Tribunal.

In accordance with Rule 7 of the ICSID Institution Rules, the Notice of Registration invites the parties to communicate to ICSID any provisions agreed by them regarding the number of arbitrators and the method of their appointment, and to proceed as soon as possible to constitute an arbitral tribunal. Please note that ICSID may not take any action regarding a proposed appointment before the number of arbitrators and the method of their appointment has been determined.

As stated in the enclosed Notice, the registration of this Request is without prejudice to the powers and functions of the Tribunal with regard to jurisdiction, competence and the merits, as provided by Articles 41 and 42 of the ICSID Convention.

Yours sincerely,

“MK”
Secretary-General

Enclosures
Notice of Registration

cc (advance copy by email or fax/ by courier with enclosures):

H.E. Ambassador
Embassy of the Republic of Tyrea
[address intentionally not reproduced here]
FriendsLook plc, SpeakUp Media Inc., and Whistler Inc.

Republic of Tyrea

Notice of Registration

(ICSID Case No. ARB/15/155)

On July 16, 2018, pursuant to Article 36 of the ICSID Convention and Rules 6 and 7 of the ICSID Institution Rules, I registered the Request for Arbitration submitted on June 29, 2018 by FriendsLook plc, SpeakUp Media Inc., and Whistler Inc. against the Republic of Tyrea.

Pursuant to Rule 7(b) of the ICSID Institution Rules, all communications and notices relating to this proceeding will be sent to the above addresses unless otherwise indicated by the parties.

Pursuant to Rule 7(c) of the ICSID Institution Rules, I invite the parties to inform ICSID of any agreed provisions as to the number of arbitrators and the method of their appointment. I further invite the parties to constitute the Tribunal as soon as possible in accordance with Articles 37 to 40 of the ICSID Convention. Pursuant to Rule 7(f) of the ICSID Institution Rules, I enclose a list of the members of ICSID Panels of Conciliators and of Arbitrators.

Finally, pursuant to Rule 7(e) of the ICSID Institution Rules, I remind the parties that the registration of the Request for Arbitration is without prejudice to the powers and functions of the Tribunal with regard to jurisdiction, competence and the merits.

“MK”
Secretary-General
Montoya Lucila Constanze
Legal Bureau
Penny Lane 17 | 5715 Tiburg | Republic of Tyrea | T: / F: +88 711 175 115

By courier

International Centre for Settlement of Investment Disputes, Secretariat
1818 H Street, N.W.
MSN J2-200
Washington, D.C. 20433
U.S.A.

Phone No. (202) 458-1534
Fax No. (202) 522-2615
E-mail: ICSIDsecretariat@worldbank.org

cc: the Republic of Tyrea, FriendsLook plc, Whistle Inc. and SpeakUp Media Inc.

Re: ICSID Case No. ARB/18/155: FriendsLook plc, Whistle Inc. and SpeakUp Media Inc. v. Republic of Tyrea: Response to the Request for Arbitration

Dear Madam/Sir,

On behalf of my client, the Republic of Tyrea, I hereby submit the enclosed Response to the Request for Arbitration pursuant to the ICSID Arbitration Rules. Please also find enclosed a copy of the Power of Attorney authorising me to represent the Republic of Tyrea in these proceedings.

Yours sincerely,

Prof. Mme Soledad Montoya

Attachments:

Request for Arbitration
Power of Attorney [intentionally not reproduced]
Curriculum vitae of Mr. Edward Hyde QC [intentionally not reproduced]
RESPONSE TO THE REQUEST FOR ARBITRATION

ICSID Case No. ARB/18/155

3 September 2018

Respondent
Republic of Tyrea
Maz Kanata
Procurator of the Treasury, Ministry of Finance
Resistance Street 3
9668 Takodana
Republic of Tyrea
T: / F: +88 785 232 446
m.kanata@mof.gov.ty

Counsel for Respondent
National Agency of Legal Defence
Positively 4th Street
9523 Takodana
Republic of Tyrea
T: / F: +88 732 565 145
andje@gov.ty

Prof. Mme Soledad Montoya
Montoya Lucila Constanze Legal Bureau
T: / F: +88 711 175 115
s.montoya@mcl.ty

Claimants
FriendsLook plc
Whistler Inc.
SpeakUp Media Inc.
[contact details intentionally not reproduced]

Counsel for Claimants
Dr Paul Johnstone
Johnstone & Associates
Shadowhawk Street 12
25-898 Fawcett City
Republic of Tyrea
T: +88 7 657 3445
F: +88 7 657 3446
p.johnstone@jst.ty

Saanvi Kavya
Kavya Faukes Robinson
27 Wilmerius St.
11253 Samanthia
Republic of Samaria
T: +384 742 3409
F: +384 742 3408
skavya@kfr.sa

INTRODUCTION

2. Respondent reserves its right to submit its Statement of Defense, Counter-Memorial or Counterclaim pursuant to Article 31 of ICSID Arbitration Rules (“ICSID Rules”) in accordance with the schedule and due process determined by the parties to this arbitration and/or the Tribunal.

3. Respondent hereby rejects all claims raised by Claimants in their Request for Arbitration and contests the Tribunal’s jurisdiction over this case.

JURISDICTION
4. The Tribunal does not have jurisdiction to hear Claimants’ case.

5. First, the offer to arbitrate under the ICSID Convention no longer stands, as the Respondent denounced the ICSID Convention on 5 January 2018 [RESPONDENT’S EXHIBIT 1]. Pursuant to Article 72 of the ICSID Convention, its denunciation by a Contracting State does not affect the rights and obligations arising therefrom only when the relevant Contracting State consented to the jurisdiction of the ICSID
before the receipt of the notice of denunciation by the depositary. In the case at hand, however, the notice of Respondent’s denunciation of the ICSID Convention was received by the depositary on 5 January 2018, with Respondent never giving its consent to the jurisdiction of the ICSID over these proceedings prior to such receipt.

Second, Claimants cannot pursue this case on a multiparty basis. Respondent never agreed to multiparty arbitration, nor are there sufficient legal and factual grounds for this Tribunal to hear these claims in a single arbitration, especially given the fact that Claimants base their case on two distinct bilateral investment treaties: the Tyrea-Novanda BIT and the Tyrea-Kitoa BIT.

RESPONSE TO CLAIMS ON MERITS

Even if, arguendo, the Tribunal should recognise its jurisdiction over the case at hand, Respondent submits that Claimants’ investments in Tyrea were not expropriated. Claimants’ advertising contracts and paid subscriptions to “pro” features of the social networks do not amount to assets susceptible to expropriation. As regards Claimants’ allegations of indirect expropriation, blocking of access to Claimants’ websites from the territory of Tyrea can hardly have had a substantial adverse economic impact on Claimants’ international business. Moreover, Claimants’ physical assets in Tyrea remain intact and the only reason why the same are not used by the Claimants to their profit is the Claimants’ own business decision to wind down all operations in Tyrea.

Contrary to Claimants’ allegations, Respondent’s measures, including the adoption of Law No. 0808-L Amending the Law and Media and Communications (“Law No. 0808-L”) on 12 January 2018 and the blocking of Claimants’ social network platforms by the Tyrean Communications Authority’s Ordinances dated 28 February, 1 March and 2 March 2018 due to the Claimants’ non-compliance with the new regulatory framework, were aimed exclusively at safeguarding Respondent’s public order and amounted to a reasonable and valid exercise of the Respondent’s regulatory powers. When Tyrean people are being hurt and killed in the streets, the Tyrean State has the right and the duty to step in to protect its people and restore peace. Absent any proposal or willingness from stakeholders with influence, such as the Claimants, to effectively deal with the situation and achieve a compromise, an alleged fight for freedom of expression is only hypocritical. Drastic times call for drastic measures. In light of the above, Respondent’s actions were justified and cannot qualify as an unlawful expropriation of Claimants’ investments in Tyrea.

Finally, Respondent’s measures did not in any way discriminate against Claimants. Law No. 0808-L clearly established a universal standard without any distinction as to any particular entity or person. The decision to block Claimants’ platforms was made in accordance with the applicable laws of Tyrea and based on a fair case-by-case assessment of the relevant circumstances by competent and qualified public officials and did not amount to discrimination in respect of Claimants.
ALLEGED DAMAGES

10. Claimants estimate their damages in the amount of no less than 69,134,875 USD for FriendsLook plc;
26,760,460 USD for Whistler Inc.; and 27,094,000 USD for SpeakUp Media Inc., plus interest, without, however, having provided any support whatsoever for the alleged compensation sought. To begin with, Claimants’ alleged need to close their representative offices in Tyrea cannot even remotely have caused the damages requested by Claimants in this arbitration. Claimants’ reliance on lost profits, on the other hand, is heavily based on numerous assumptions and the most favourable future business operation scenario, which renders the results to a great extent hypothetical. Furthermore, the Claimants’ attempt to attribute their failed negotiations for market expansion to other countries (and the costs incurred thereof) to Respondent are unfounded and absurd, to say the least. Consequently, Respondent submits that Claimants’ calculation of damages is highly speculative and cannot be accepted.

PROCEDURAL MATTERS

Number of Arbitrators and Constitution of the Tribunal

11. Respondent agrees that the Tribunal should consist of three arbitrators and that the arbitration proceedings be conducted in English.
12. Respondent hereby appoints Mr. Edward Hyde, QC as arbitrator in this case:
[Details of the arbitrator and CV enclosed but intentionally not reproduced]

Name and Contact Details of Respondent

13. 
14. Respondent is the Republic of Tyrea. For the purposes of this case, all correspondence and notices to Respondent, including all electronic communications, should be addressed to Respondent, the National Agency of Legal Defense, and Respondent’s legal counsel at their respective addresses listed above.
15. Respondent reserves its right to name more representatives or advisors.

RELIEF REQUESTED

785. Respondent respectfully requests the Tribunal to find that:
1. it has no jurisdiction to hear this dispute under the Tyrea-Kitoa BIT and Tyrea-Novanda BIT in light of Respondent’s denunciation of the ICSID Convention;
2. it has no jurisdiction to hear Claimants’ case jointly in a multi-party arbitration;
3. if the Tribunal finds that it has jurisdiction to hear this dispute:
   a. Respondent’s actions do not amount to expropriation of Claimants’ investment within the meaning of Article 6 of the Tyrea-Kitoa BIT or Article 6 of the Tyrea-Novanda BIT respectively, and in any event were a lawful exercise of Respondent’s regulatory powers;
b. Respondent’s actions did not in any event constitute a violation of the fair and equitable
treatment standard set out in Article 3.1 of the Tyrea-Novanda BIT and Article 3.1 of the
Tyrea-Kitoa BIT;
c. in the event that the Tribunal does not grant the above requests for relief, that Claimants’
claim for damages lacks legal basis and evidentiary support and is based on incorrect
factual and legal assumptions; and

4. Respondent is entitled to reimbursement by Claimants of all costs and fees incurred by Respondent
in connection with these proceedings.

17. In the interests of procedural efficiency Respondent hereby requests the Tribunal to decide on issue (1)
above as a preliminary matter in accordance with Rule 41(5) of the ICSID Rules, without prejudice to
the parties’ right to present further arguments if the Tribunal does not recognise its lack of jurisdiction
on that basis and decides to review the jurisdictional objections in the course of the main proceedings
instead.

18. Respondent reserves the right to amend or supplement the above arguments, as well as to present a
counterclaim.

Respectfully,

Prof. Mme Soledad Montoya
Montoya Lucila Constanze Legal Bureau

for and on behalf of Republic of Tyrea
To: President of the World Bank, Dr. Jim Yong Kim

Your Excellency the President of the World Bank Group,

I am addressing you in relation to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), opened for signature at Washington on 18 March 1965 and ratified by the Republic of Tyrea on 15 December 2000.

On behalf of the Government of the Republic of Tyrea, I hereby express the sovereign decision of the Republic of Tyrea to denounce the ICSID Convention, pursuant to Article 71 thereof, with immediate effect.

Whereas the Republic of Tyrea has been a member state of the ICSID Convention for 17 years, sharing the aim to promote international cooperation for the economic development of the Contracting States, this proved not to be the actual direction that the international settlement of disputes under the Convention took. The long-lasting imbalance between the interests of investors and States is demonstrated by the vast majority of the awards issued thereunder. The protection of the interests of the State and its nationals is of the foremost importance to the Government of Tyrea, as enshrined in the Tyrean Constitution. For the foregoing, please consider the present Note as the Formal Notice of Denunciation of the ICSID Convention so that all its international effects cease, as far as the Republic of Tyrea is concerned, as well as the competence of any tribunal or committee established thereunder as to Tyrea.

The Ministry of Foreign Affairs of the Republic of Tyrea avails itself of this opportunity to renew to the President of the World Bank the assurances of its highest consideration.

Manuel Amedda
Minister of Foreign Affairs
Over the last several years, the use of social media has quickly spread around the world. Billions of accounts in different platforms, millions of posts shared every day, uncountable messages sent.

It is true that the expansion of social media around the world has made the dissemination of information much easier, knowledge much more accessible, communication almost effortless.

Yet, it is also true that this popularity of social media has its (very) dark side. In fact, the recent situation in Tyrea has brought to the front questions about this potentially harmful impact of social media. Since the liberalization of the internet in the country, international social media platforms have started operating and becoming popular in the country.

FriendsLook, Whistler and SpeakUp Media have become the most commonly used social media platforms in Tyrea – and thus the most influential.

It comes as no surprise that propagators of hate speech resort to such social media platforms to wage hate campaigns, augment their message and reach new audiences. Misinformation, fake news and unfounded allegations can also serve such hate campaigns very well.

Quite recently for instance, after the yearly Tyrean National Day Parade, the statue of General Russell Yaky in Tyrea’s Freedom Square was found decapitated. The latter was regarded by many as a national hero and was of Tatyar descent. Following this event, Arsinoi Greu, who owns an account in FriendsLook with millions of followers, shared a post accusing the Minyar people for this “hate act” against Tatyar heritage and called for retaliatory measures.

This is just another piece of a series of hate posts and accusations between vigorous representatives of the country’s radicalist groups. In November 2016, MinyarFreedomLeague outright accused the Tatyar people of being responsible for the disappearance of Minyar teenagers and called for drastic action against them.

While these allegations were never proven to be true, such posts created a ripple effect. They immediately started being shared among accounts, across social media, leading to frustration and exchange of heated comments. They did not stay behind the screen but found their way into the streets. They gradually awakened a dormant, but existent, tension between the Minyar and the Tatyar. That tension escalated rapidly. Violent clashes broke out across the country. People died. Hate didn’t.

It is still spreading in Tyrea as you’re reading this.

Antony Isengaard
RESPONDENT'S EXHIBIT 3

(certified translation in English from the Tyrean language)

Screenshot 1

www.friendslook.com

Madoga Freevoice
Public post
[28 November 2016]

Friends! Everyone who remains loyal to the interests of the Tatyar! It is time. The war never ended, especially not when the Minyar president took power. It is still out there. The legend has it that the two wings of the eagle on our country's emblem represents the Minyar and the Tatyar. Ironically, it is only one of the two that the eagle's head is actually facing, only one of the two that it favours. And that “one” is most definitely not the Tatyar.

And now - look at the news. Every single day we see the Tatyar kicked out of work, arrested for any misstep, refused jobs and education - all this done by Minyar oppressors. How long, good people? It is time to end this war ourselves and in our favour - and we can only do this if we continue fighting. There is no peace until we gain ourselves the rightful place. The place that we deserve. #TyreaforTatyar

Seen by: 27 mln
“Yeah!”: 2 mln
Reposted: 1.1 mln
Comments: 1.2 mln

_________
RESPONDENT'S EXHIBIT 3 [continued]
(certified translation in English from the Tyrean language)

Screenshot 2
www.whstlr.com

**rb16x** published a whistle:
[1 December 2016]

Time to end this, any means justified! A lonely mother of seven left in the streets fired by her Minyar employer over her Tatyar background: [http://slnk.org/12-3](http://slnk.org/12-3).

#TyreaforTatyar

Seen by: 30 mln
“Approved” by: 1 mln
Re-whistled by: 500k
Comments: 2 mln

Screenshot 3
www.sp-up.com

**MinyarFreedomLeague** ProSpeaker
[30 November 2016]

*The Tatyar Conspiracy: Our Own Investigation Continued!*

Continuing our series of posts uncovering the Tatyar conspiracy against our people, we have now looked at the incidents in Takodana, so cunningly and conveniently swept under the rug by the authorities. What do they fear? While the Tyrean government continues to pretend this constant Tatyar menace does not exist, our people continue to suffer. Time to uncover the truth behind the disappearances of Minyar teenagers in Takodana’s nightclubs owned by Tatyar - things you will never read in official newspapers! A tale of secrets, threats, ransom and slavery - hear it all from us and see for yourself that it is time to act!

[The remainder of the post is available only to authorised users of SpeakUp. To read the material to the end, please sign in - or sign up for free! SpeakUp is the platform to share your thoughts with the world - do not hold back!]
RESPONDENT'S EXHIBIT 3 [continued]
(certified translation in English from the Tyrean language)

Screenshot 4
[messenger application “Wink”]

message from: Just Justicecall
to: [personal data of a verified user intentionally not reproduced]
on: 20:11 28 November 2016

Shocking news on the threat to all Minyar! Are you safe enough...
read: shurl.ty/5t67

Screenshot 5 (translated from Tyrean)
www.truthsee.ty

...uncovering the truth

Anima Libera: The Free Correspondents' Blog

Published: 25 November 2016

We smell it in the air. Hearsay has it that something is going quite as planned in our united camp.

More than four years have passed since the day that will always remain in the history of our country - the day when the Minyar and the Tatyar laid down their weapons for the sake of the peaceful future of our children. Merely two months after this anniversary we see how false this interlude of security actually is.

Our special report follows the traces of the “innocent” thread with the hashtag “#TyreaforTatyar” - a story of false accusations and death threats thrown in the face of our people. Because whatever we do and however we do this, we will always be the ones to blame by the aggressor in our midst.

Read our report at http://shlnk.fp/a1b2 and share with others. #TruthonTatyar, #TimeforTruth
RESPONDENT’S EXHIBIT 4

In the Matter of an Arbitration under the Arbitration Rules of the International Centre for the Settlement of Investment Disputes

Case No. ARB/18/155

Between

FriendsLook plc

SpeakUp Media Inc.

and Whistler Inc.

(Claimants),

v.

Republic of Tyrea

(Respondent)

EXPERT REPORT OF
PROFESSOR MAGDALENE E. DIMARCO

3 September 2018
I. Introduction

I am Magdalene E. DiMarco Professor of Finance at Arendelle Business School. I have previously served as Chair of the Finance subject area, and Director of the Institute of Finance and Accounting at Arendelle Business School. For ten years I was the Managing Director in the Arendelle office of FinAcc Consulting, Inc. I have been retained as a financial, valuation, and damages expert in more than 60 international arbitrations, including more than 35 investor-state arbitrations. My curriculum vitae is included as Appendix 1 to this report [intentionally not reproduced here].

I have been instructed by the Republic of Tyrea to submit my expert opinion on issues of damages and valuation in the underlying arbitration proceedings at issue here.

[...]

III. Criticism of the Discounted Cash Flow Approach proposed by the Claimants’ Expert

Claimants’ requested compensation is based on the hypothetical value of the Tyrean branches of FriendsLook plc, Whistler Inc. and SpeakUp Media Inc. They propose that the value be determined using the discounted cash flow (DCF) model. The DCF valuation method constitutes a financial technique predicated on the ability to estimate with reasonable certainty a number of future parameters, and then discount the net income at an appropriate rate. Even minor adjustments in that estimation can result in significant divergences in the total calculation of damages. While DCF may be a very useful valuation method and has been applied in many cases, its use in the present case would be inappropriate, as it would result in basing damages on sheer speculation.

The DCF method is based on a company’s future profitability. This profitability, although projected, should be based on actual data and not unsupported assumptions. In order for the method to work properly, at least some basic criteria should be met: the firm should have an established historical record of financial performance; the adoption of a detailed business plan should be demonstrated to justify any projection of future cash flows; the price at which the firm will be able to sell its products or services (here the online advertisements) needs to be capable of being determined with reasonable certainty; it is possible to calculate a valid weighted average cost of capital (WACC), including a sensible country risk premium, which reasonably represents the political risk in the host country.

The Claimants retain an ad-based revenue model. Ad-based profitability is based on click-through rates. No sufficient data has been provided to support future cash flows on that front. In the expert damage report submitted by Mr. Alfonso Alonzo, Claimants’ Expert, the projection for 2018 is more than double
from the revenues for 2017, which seems completely unsupported. It is far from certain whether the Claimants’ business would actually have reached the alleged level of sales.

[...]

Another important factor for the appropriate use of the DCF method is the determination of the country risk rate, which is used to discount the projected cash flows. When it comes to an emerging economy facing instability due to political and social uncertainty, such as the Republic of Tyrea, the country risk measure becomes more acute. The 5% discount rate proposed by Mr. Alonzo is unfounded, let alone very low, given the adverse effects of political, economic and financial risks of operating in Tyrea that should be taken into account. Nor has Mr. Alonzo taken into account the country risk premium that would fairly represent the political risk in Tyrea. At any rate, the constant changes and the political and social unrest that the country has undergone during the last years render it hard to safely calculate a meaningful country risk premium, which is essential to properly use the DCF method.

[...]

Considering the factors analysed above, it is my opinion that the application of the DCF approach to calculate damages in the present case would lead to an artificially inflated result dependent on selective assumptions, uncertainties and contingencies.

IV. Proposed Cost-based valuation

Instead, the only reliable method for calculating the Claimants’ alleged damages in this case is based on proven expenditure. As mentioned in the expert report submitted by Mr. Alonzo, this figure is USD 2,654,125 for FriendsLook plc, USD 1,482,040 for Whistler Inc. and USD 1,162,000 for SpeakUp Media Inc.

[...]

I declare that the foregoing is in accordance with my sincere belief.

Professor Magdalene DiMarco

Arendelle, 3 September 2018
By email

FriendsLook plc,
SpeakUp Media Inc., and
Whistler Inc.

Republic of Tyrea

Re: FriendsLook plc, SpeakUp Media Inc., and Whistler Inc. v. Republic of Tyrea
(ICSID Case No. ARB/18/155)

Dear Sir and Madam,

I write to inform you that Dr. Gabriella Utterson, Dr. Henry Jekyll and Mr. Edward Hyde QC, have all accepted their appointments as arbitrators in this case. The Tribunal is therefore deemed to have been constituted, and the proceeding to have begun, as of today pursuant to ICSID Arbitration Rule 6.

Please find attached copies of the declarations required under ICSID Arbitration Rule 6(2), signed by Dr. Gabriella Utterson, Dr. Henry Jekyll and Mr. Edward Hyde QC.

Copies of the request for arbitration and its accompanying documentation, the notice of registration, and all correspondence between ICSID and the parties relating to this proceeding will be sent to the members of the Tribunal in accordance with ICSID Arbitration Rule 30.

Mary Reilly, Legal Counsel, ICSID, will serve as the Secretary of the Tribunal. Ms. Jones will contact you regarding arrangements for the Tribunal’s first session and the initial advance payment to be made by the parties. She can be reached by telephone at +1 (202) 444-4444 or by email at mreilly@worldbank.org.

Yours sincerely,

“MK”
Secretary-General

Attachments
(intentionally not reproduced here)

cc by email and courier (with attachments): Members of the Tribunal
1105

International Centre for Settlement of Investment Disputes, Secretariat
1818 H Street, N.W.
MSN J2-200
Washington, D.C. 20433

1110

U.S.A.

Phone No. (202) 458-1534
Fax No. (202) 522-2615
E-mail: ICSIDsecretariat@worldbank.org

cc: the Republic of Tyrea, FriendsLook plc, Whistle Inc. and SpeakUp Media Inc.

21 December 2018

REQUEST FOR PROVISIONAL MEASURES

ICSID Case No. ARB/18/155

1. The Republic of Tyrea (“Tyrea”) hereby submits its Request for Provisional Measures, according to Art. 47 of the ICSID Convention and ICSID Arbitration Rule 39(1). Tyrea respectfully requests the Tribunal to order Claimants to refrain, for the duration of the arbitration proceedings, from taking any steps which might aggravate this dispute or exacerbate Tyrea’s position in it, and in particular that Claimants abstain from promoting, stimulating, or instigating the publication of propaganda, presenting their case selectively outside this Tribunal, or otherwise jeopardizing Tyrea’s rights in this dispute.

2. Since the initiation of the arbitration, the Claimants have engaged in various actions aimed at aggravating the dispute and mischaracterising Tyrea and measures taken by its government. During the last year, the Claimants have been waging a large-scale aggressive media campaign against the Tyran Government both within and outside Tyrean territory. To that effect, they have hired professional public relations experts to issue negative information to the press. Such content is repeatedly featured as sponsored content in the FriendsLook platform version outside Tyrea or flagged as “popular across FriendsLook”, being displayed to millions of users, without them having chosen to view/followed the respective publisher’s posts.

3. This media campaign is showcased in multiple examples of (both print and digital) media titles around the world, such as the following:

   - “Protection(ism) in Tyrea: When a country blames social media for its inability to deal with its internal affairs”, The Business Frontier (July 2018);
- “Freedom of Expression under Fire: How human rights are, once more, violated in Tyrea”, The World Times (August 2018);
- “You are not free to post: Three social platforms’ fight against censorship in Tyrea”, LookOut Post (August 2018);
- “Tyrea: 404 - The Freedom You Requested Cannot Be Found”, Global Diplomatic Report (September 2018);
- “Filtering Freedom Down: How to do it in 3 simple steps – Lessons from Tyrea”, The Global Herald (October 2018);
- “Freedom of expression and communication in Tyrea: What is that?”, newsaroundtheworld.com (October 2018);
- “Tyrea’s International News: Hypocritical State finds freedom of expression hypocritical”, international-news.com (October 2018);
- “No news, good news: Social Media Censorship in Tyrea”, The Freedom Writer (November 2018);
- “Tyrea’s World Expo bid: Should the Bureau International des Expositions (BIE) ignore grave restrictions on rights and freedoms in Tyrea?”, The World Times (November 2018);
- “Media censorship in Tyrea: A Case Study”, Vox Mundus (December 2018).

4. Most outrageously, in October 2018 “The Global Herald” published the Request for Arbitration, along with a witness statement of Ms. Parlante, the Regional Vice-President of SpeakUp, who claimed that in a private meeting that took place on 28 January 2018, Respondent’s Minister of Telecommunications, Information Technology and Mass Media, Mr. Woodlant, “threatened” that if they did not allow the government access to the platform, the platform would immediately be blocked. This is an outright misrepresentation on Claimants’ part. The meeting did occur, but Mr. Woodlant only presented Tyrea’s grave situation and discussed the role of the social media in it.

5. Further, Claimants have engaged in publication of case materials, intentionally distorting the context. An online article in the digital newspaper international-news.com, entitled “Tyrea’s International News: Hypocritical State finds freedom of expression hypocritical”, isolated a phrase from Respondent’s Response to the Request for Arbitration to portray Respondent as an oppressor of free speech and paint a distorted picture of the dispute. The misleading phrase “freedom of expression is hypocritical”, taken half-sentence and out of context, was later reproduced by other websites and even by the international newspaper The Vox Mundus, which is circulated in many countries, including Tyrea. That also led to the downgrading of Tyrea with regard to freedom of expression by several NGOs, such as Amnesty International and Reporters without Borders.

6. In addition to this media war, Respondent has evidence of Claimants engaging lobbyists to pressure Tyrean authorities to revoke the measure. On top of that, it is known that Claimants have used their access to “big data” collected by their statistical systems to target online accounts of individuals responsible for making decisions important for Respondent and indirectly influence them by creating a grim picture of Respondent’s policies.
7. Claimants’ direct attack on Respondent does not end here. At the end of November 2018, when the Tyrean Ambassador in Kitoa directly confronted Whistler’s representative and asked whether the Claimants would change their aggravating conduct, the representative did not feign ignorance as to that conduct, as the Claimants do now, but rather responded that they would stop “when Tyrea withdraws its World Expo bid”. In early December 2018, a SpeakUp representative stated outright that “the lobbying will continue”.

8. Furthermore, Tyrea has made a bid for hosting World Expo 2030, the decision in respect of which will be made on January 2025. Hosting a World Expo could attract millions of visitors to Tyrea, generate large revenues for the country and boost Tyrea’s image worldwide. Therefore, Claimants’ conduct could greatly undermine this attempt to develop a more extrovert economy and promote the country’s growth.

9. This media propaganda war waged by Claimants is highly likely to inflict serious damage on Respondent’s economy, further exacerbate the volatile political situation in Tyrea and generally aggravate the dispute and adversely affect Respondent’s rights. Claimants’ tactics do anything but ensure the orderly unfolding of the arbitral process and create undue external pressure on Respondent from many fronts. Considering the international nature of the media campaign, Respondent believes that the propaganda may also affect the impartiality of the members of the Tribunal, seriously jeopardising Respondent’s position in this dispute.

10. Tyrea is a country in a political and economic transition. Along with its efforts to prevent civil unrest and to safeguard peace and security in its territory, Tyrea is making serious efforts to develop anew its economy and smoothly transition to a modern market economy. In this context, it has taken actions to attract foreign investment, by arranging meetings between government officials and foreign companies etc. Most importantly, Respondent is planning a large 5-year sovereign bond issuance, to return to the capital markets, in December 2019, to be followed by a 10-year bond issuance. This will be its debut debt-raising since the beginning of the civil unrest, and Tyrea aims at raising up to USD 2.5 bn. Painting a grim picture of the country will undoubtedly aggravate its international position and is very likely to increase the overall cost of the issuance.

11. Finally, the continuous misuse and misrepresentation of arguments and the dispute in domestic and international media will further inflame the social and political situation in the country, something that the very measures in question were trying to prevent.

12. For the foregoing reasons, Tyrea requests that the Tribunal grant the requested provisional measures and award Tyrea all the costs in connection herewith.

Respectfully submitted,

Prof. Mme Soledad Montoya
Montoya Lucila Constanze Legal Bureau

for and on behalf of Republic of Tyrea
In the arbitration proceeding between

FriendsLook plc

SpeakUp Media Inc.

and Whistler Inc.

(Claimants)

v.

Republic of Tyrea

(Respondent)

ICSID Case No. ARB/18/155

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Dr. Gabriella Utterson, President of the Tribunal
Dr. Henry Jekyll, Arbitrator
Mr. Edward Hyde QC, Arbitrator

Secretary of the Tribunal

Ms. Mary Reilly

1 February 2019
Introduction

The first session of the Arbitral Tribunal was held on 7 January 2019 at the seat of the Centre in Washington, D.C.

Participating in the first session were:

[...] [intentionally not reproduced]

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the Claimants and the Respondent (the “Parties”) have agreed, and the Tribunal has determined shall govern this arbitration.

1. Applicable Arbitration Rules

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006, and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In case of an inconsistency between the two, the latter shall prevail to the extent of the inconsistency.

2. Constitution of the Tribunal

2.1. The Tribunal was constituted on 20 December 2018 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were duly distributed to the Parties by the Centre.

2.3. Contact details of each Member of the Arbitral Tribunal are as follows:

Dr. Gabriella Utterson
Utterson & Partners LLP
11 Noim Square
T2A12 Springfield
Email: g.uterson@utlaw.com

Dr. Henry Jekyll
Otto International
Research Institute
32 Edyh Avenue
16091 Twofacefield
Email: jekyll@otiri.org

Mr. Edward Hyde QC
Hyde, Strange & Associates
23 Llykej Street
19061 Alsburg
Email: hyde@hystlaw.com

3. Representation of the Parties

[...] [intentionally not reproduced here]
4. **Place of Proceeding**

4.1. Washington, D.C., shall be the place of the proceeding. It was decided that the Tribunal may hold hearings in Miami or at any other place that it considers appropriate if the Parties so agree.

4.2. The Tribunal may deliberate at any place it considers convenient.

5. **Language**

5.1. The language of the proceedings shall be English.

6. **Organization of Hearings**

6.1. Having considered and deliberated about the Parties’ respective proposals on the organization of the pleadings and in accordance with the Tribunal’s Decision on Respondent’s Preliminary Objection to the Jurisdiction of the Tribunal under Rule 41(5) of the Arbitration Rules of 1 February 2019, the Tribunal determines the following organization of the hearings and fixes the procedural calendar for the Parties’ subsequent submissions.

6.2. Although the issues that the Claimants and the Respondent have raised in their submissions typically would be addressed in two or more separate stages (provisional measures, jurisdiction/admissibility, merits, and remedies) of these proceedings, they shall be addressed in two main stages for the purposes of the FDI Moot. “Stage 1” will address:

a) Whether the Tribunal should grant the provisional measures requested by Respondent;

b) Whether the Tribunal has jurisdiction over the dispute, given that the Respondent has denounced the ICSID Convention;

c) Whether the Tribunal has jurisdiction over the multi-party arbitration claim brought against the Respondent;

d) Whether the blocking of the Claimants’ platforms is in violation of Articles 3(1) and 6 of the Tyrea-Novanda BIT and Articles 3(1) and 6 of the Tyrea-Kitoa BIT;

e) Whether the compensation requested by the Claimants is speculative and which is the appropriate method for the quantification of damages in this case.

6.3. During “Stage 1” the Tribunal will hold a hearing on the issues of Provisional Measures, Jurisdiction, Liability, and Remedies, and subsequently render a Decision on the Provisional Measures as soon as possible after the hearing, and decide on Jurisdiction, Liability and Remedies.

6.4. “Stage 2” will address the quantum of damages, if any, as well as the costs of the proceedings and their allocation among the parties.
6.5. As agreed between the Parties and the Tribunal, the evidence that may be relied on in the arbitration will be limited to (i) facts and assertions contained in the Request for Arbitration and the Response to it, the “Statement of Uncontested Facts” appended to this Order (with no admission being made by either of the Parties as to correctness of the inferences from facts asserted by the other Party in its respective submission); (ii) publicly available information; and (iii) responses to the questions presented by the Parties’ counsel in accordance with the procedure described below:

- By 1 June 2019 factual questions that require clarification shall be posted in accordance with the procedure described at https://fdimoot.org/teams/clareqs.php;
- The Parties shall then confer and seek to agree as soon as practicable on the responses to those questions. The Parties’ agreed responses shall be appended to the case file at https://fdimoot.org/problem.pdf;
- By 8 August 2019 another set of factual questions may be posted in accordance with the same procedure referenced above. The responses to those questions shall be appended as described above.

7. **Provisional Timetable of the Proceedings**

7.1. “Stage 1” of the Proceedings:

- Only one round of written submissions shall be made by the Parties. The Claimants’ Memorial on Jurisdiction, Liability and Remedies is to be submitted to the Tribunal no later than 16 September 2019; the Counter-Memorial on Jurisdiction, Liability and Remedies is to be submitted to the Tribunal by the Respondent no later than 23 September 2019. The Tribunal may direct the Parties to submit Skeleton Briefs if it finds them necessary for the proper consideration of the issues in dispute.
- Considering that it is appropriate to hold hearings in the present case, both Parties are invited to attend the hearings scheduled for 7 to 10 November 2019 at University of Miami.

7.2. “Stage 2” of the Proceedings: The Tribunal will schedule the second stage of the proceedings and set the provisional timetable for its conduct in consultation with the Parties after the Tribunal issues the Decision on Provisional Measures and the Award (on Jurisdiction, Liability and Remedies).

8. **Publication**

8.1. Pursuant to ICSID Convention Article 48(5), Administrative and Financial Regulation 22, and Arbitration Rule 48(4), the Parties consent to ICSID publication of any Procedural Orders,
Decisions, and Award issued in the present proceeding, subject to the redaction of confidential information.

9. **Good Faith**
   
   9.1. The Parties accept that they have a duty to arbitrate in good faith, which includes an obligation to cooperate with the opposing parties and the Tribunal. The Parties further agree that the Tribunal may direct any Party to do all such things during the proceedings as may be reasonably needed to enable an Award to be made properly, fairly and efficiently.

   [Signed]

   1340
   Gabriella Utterson
   President of the Tribunal

   [Signed]  [Signed]

   1345
   Henry Jekyll  Edward Hyde QC
   Arbitrator  Arbitrator
In the arbitration proceeding between

FriendsLook plc
SpeakUp Media Inc.
and Whistler Inc.
(Claimants)

v.

Republic of Tyrea
(Respondent)

ICSID Case No. ARB/18/155

DECISION ON RESPONDENT’S APPLICATION UNDER
ICSID ARBITRATION RULE 41(5)

Members of the Tribunal
Dr. Gabriella Utterson, President of the Tribunal
Dr. Henry Jekyll, Arbitrator
Mr. Edward Hyde QC, Arbitrator

Secretary of the Tribunal
Ms. Mary Reilly

1 February 2019
I. Introduction

1. This is the Tribunal’s Decision on an application under ICSID Arbitration Rule 41(5) lodged by the Republic of Tyrea (the “Respondent”) through which the Respondent seeks to have the Tribunal dismiss the claims brought by FriendsLook plc, SpeakUp Media Inc., and Whistler Inc. (the “Claimants”) for being manifestly without legal merit.

2. Were the Tribunal to uphold the Respondent’s application, Rule 41(6) requires that that be done by an Award. As the Tribunal has, however, concluded that the application must be rejected, it will do so by way of the present Decision, for the reasons set out below.

IV. The Respondent’s Rule 41(5) Application

25. With its Response to the Request for Arbitration of 3 September 2018, the Respondent submitted an Objection under Rule 41(5) of the ICSID Arbitration Rules to the claims set forth in the Claimants’ Request for Arbitration on the ground that the same were “manifestly without legal merit” and shall be dismissed by the Tribunal without prejudice, together with an order that the Claimant shall bear all legal fees and expenses incurred by the Respondent in these arbitration proceedings.

26. By its Response of 27 December 2018, the Claimant opposed the Respondent's Objection, requesting a decision from the Tribunal denying the Objection under Rule 41(5) of the ICSID Arbitration Rules.

[...]

a. Respondent’s Arguments

   [intentionally not reproduced]

b. Claimants’ Arguments

   [intentionally not reproduced]

c. The Tribunal’s Analysis
The Tribunal begins with a brief observation on the standard to be applied for determining a Rule 41(5) Objection. The Parties agree that the standard to be applied by the Tribunal in this regard is a high one, which is this Tribunal’s opinion as well. Rule 41(5), introduced in 2006, is designed to address a claim that is evidently defective from a legal perspective that it can be disposed of outright, without the need of more elaborate arguments or factual enquiries.

The term “manifestly” in the context of this Rule has been interpreted by many tribunals. It means something that is “evident”, that is not capable of reasonable dispute. While investment disputes do in general involve a certain degree of complexity and thus the disposition of an objection under Rule 41(5) may be a complicated task, it should never be a difficult one. Rule 41(5) is not intended, nor should it be used, as the mechanism to address complicated, difficult or unsettled issues of law. Such issues can only be the subject of a regular preliminary objection under Rule 41(1) or a regular defence on the merits.

The Respondent asserts that consent, the main jurisdictional requirement, is clearly missing in the present case, and therefore the claims presented by the Claimants in their Request for Arbitration dated 29 June 2018 are “manifestly without legal merit”. Respondent argues that no rights and obligations can arise out of the Convention after the denunciation, unless both parties have given their consent to the jurisdiction of ICSID before the receipt of the denunciation notice, the latter having been received by World Bank on 5 January 2018.

The Tribunal has serious doubts about this proposition, particularly (but not exclusively) within the narrow limits of the “manifest” legal defect standard of Rule 41(5). The Respondent does not even contend that there is settled jurisprudence on the issue, such that a tribunal could find outright that the Claimants’ claims lack legal merit, without more elaborate argumentation. The Respondent, of course, retains the right to try to convince the Tribunal otherwise at a subsequent stage of this proceeding.

In fact, the Respondent has reserved the right to raise this objection to the Tribunal’s jurisdiction, as entitled under Rule 41(1), and requested that the Tribunal consider the Objection as a request for bifurcation. In the opinion of the Tribunal, however, the proceeding will be most efficient if the consideration of this and the other jurisdictional objections that the Respondent has raised are joined to the merits.

V. Decision

For the reasons set out above, the Tribunal:

(1) Denies the Respondent’s application for dismissal of the Claimants’ claims on the grounds that they are “manifestly without legal merit”, pursuant to Rule 41(5) of the ICSID Arbitration Rules;
(2) Defers ruling on allocation of the costs of the Rule 41(5) application, to be considered together with the allocation of further costs of this arbitration at a subsequent stage of proceedings;

(3) Decides to join the objection to the merits, along with the other jurisdictional objections submitted by the Respondent; and

(4) Issues Procedural Order No. 1 in accordance with this Decision.

[Signed]

Gabriella Utterson
President of the Tribunal

[Signed]  [Signed]

Henry Jekyll  Edward Hyde QC
Arbitrator  Arbitrator

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Statement of Uncontested Facts

1. The Republic of Tyrea (“Tyrea” or “Respondent”) is a state that emerged from a civil war in September 2012. After the hostilities came to an end, internationally supervised elections took place in January 2013 to transition the country from a military dictatorship to a democracy. The civil war was caused by the conflict between the two major ethnicities inhabiting Tyrea, the Minyar and the Tatyar. Although hostilities are over and a compromise between the two ethnicities seems to have been reached, the tension still remains. These two ethnicities also form part of the population in Alcadia and Larnacia, two countries bordering Tyrea.

2. Respondent is party to several bilateral investment treaties (“BITs”) concluded during a temporary shift to a more open trade policy in the early 2000s, among them the BIT with the Federation of Novanda (“Novanda”) signed on 28 March 2000 (the “Tyrea-Novanda BIT”) and the BIT with the Union of Kitoa signed on 20 January 2001 (the “Tyrea-Kitoa BIT”). The Tyrea-Novanda BIT and the Tyrea-Kitoa BIT were ratified on 10 September 2000 and 25 May 2001, respectively. In the same period of its political history, Respondent also acceded to the ICSID Convention on 15 December 2000. Novanda and Kitoa had acceded to the ICSID Convention in January and October 1995, respectively.

3. Respondent has a population of 120 million and was regarded by major international social networks as a strategic new market after it passed the new Law on Media and Information No. 1125-L on Media and Information dated 10 September 2013 (the “Media Law”) liberalising the Internet and loosening its control over the media and the press. On the day of the publication of the Media Law, Mr. Anderson, the spokesperson for the Tyrean parliament, in his official statement for the press, expressed the Tyrean legislative body’s intention to keep in line with the liberalisation trend in Tyrea. More specifically, Mr. Anderson mentioned that “it has become known that major international social networks such as FriendsLook, SpeakUp, Whistler, and others, are considering Tyrea as a new market, and that some of them have even approached Tyrean ambassadors in Novanda and Kitoa to better understand the investment climate in Tyrea” and that “by the new Media Law Tyrea expects to lay down the ground for the advent of such prominent international players and for fruitful collaboration with them in the future”.

4. The steps the new Tyrean government undertook led to the population getting wide access to the Internet, so that according to the survey conducted by the Tyrean Communications Agency (the “TCA”) in 2018, by 1 January 2018 almost every inhabitant of Tyrea over the age of 10 had an account on at least one of the social networks accessible in Tyrea.

5. In December 2014, Tyrean government sponsored an international conference “A New Web Era in Tyrea” taking place in Takodana, the Tyrean capital, for representatives of social media platforms, internet service providers representatives, online brands and other businesses. In her opening speech widely quoted by the international press, a representative of the government of Tyrea said that “we
declare with absolute certainty that a new internet era has begun for Tyrea and that we will do our absolute best to facilitate the establishment and use of new internet possibilities for the people of Tyrea”.

6. Three international social networks (FriendsLook, Whistler and SpeakUp), which had been exploring Tyrea as a potential expansion opportunity after the adoption of the Media Law, regarded Tyrea as the key target market. One of the main attractions was not only a potentially large audience, but also the lack of large competitors such as Facebook, Twitter, LiveJournal, Tumblr, and other similar networks, which up till the present day are not accessible in Tyrea. FriendsLook, the biggest and most popular of the three, after making substantial contributions in advertising and localising the website, created a local branch in Tyrea and launched the Tyrean version of its website in January 2015. Whistler and SpeakUp followed suit in early summer 2015 employing the same model of operation in Tyrea.

7. **FriendsLook** is a global network bringing together people from around the world, incorporated in, and in accordance with, the laws of Novanda. Considered as one of the most popular and widespread social networks in the world, FriendsLook counts hundreds of millions of accounts and has a strong presence in more than 100 countries. FriendsLook became a public company in 2009 with its initial offer at the NASDAQ, where it has been trading ever since. FriendsLook provides to the user a multifaceted platform to share, or “post” thoughts, pictures and videos, as well as create pages, groups, and virtual meet-ups with countless other users. FriendsLook requires the new subscriber to be at least 18 years old. Creating a FriendsLook account is easy and free; however, the user may opt for personalized content and advertising by paying USD 12 per annum, or USD 1 per month. FriendsLook’s revenue inflows include advertising (approximately 85%) and personalized content (approximately 15%).

8. **Whistler** is another global social network, constituted in accordance with the laws of Kitoa, which has gained popularity over the course of the last eight years. Similar to FriendsLook, it allows users to express their thoughts and ideas through short (280 characters) posts, the so-called “whistles”. Unlike FriendsLook, Whistler’s primary feature is a short text, however, it is also possible to share photographs, videos, and links to external websites. A Whistler user can create an account for free and follow the accounts of other users, such as friends, family, or public figures, whose “whistles” the user can “like”, “re-whistle”, or comment on. Whistler’s revenue streams include advertising in many forms, *i.e.*, paid advertising space, promoted “whistles”, accounts and trends.

9. **SpeakUp** is an international social network, incorporated in and in accordance with the laws of Kitoa, which uses the “blog” format, where anyone can create and maintain blogs populating them with any content they like, such as text, photos, GIFs, links to external websites, audios, videos, etc. SpeakUp hosts more than 400 million different blogs worldwide. SpeakUp takes pride in offering a creative platform for young people to directly express their views on a number of issues and has been praised by the international community as greatly facilitating communication and exchange of ideas by and between individuals from across the world. SpeakUp has managed to create a truly global community
within just a few years from its initiation. Its revenue comes from the sale of advertising space, as well as promotional content and hosting commercial blogs equipped with “pro” features, such as sales, advertising and promotional instruments.

10. Within months of their launch in 2015, FriendsLook, Whistler and SpeakUp became a tremendous success in Tyrea, gaining millions of new users, with FriendsLook being recognised in Tyrea as almost synonymous with the Internet itself. The number of Tyrean users engaging with the Claimants’ platform has been exponentially increasing.

11. Seeing the potential of this new market in practice, all three social media platforms soon started searching for ways to boost usage in Tyrea, by developing features tailor-made to the Tyrean public. It has been reported by local media that since early 2017, FriendsLook was working on a new feature called “FriendsWatcher”, a personalized video platform to help users discover new videos and shows, organized around what their FriendsLook connections and common group members were watching. In a similar vein, Whistler staff was working at the same time to launch their new feature called “LifeLive”, which would offer users an in-app video streaming and recording function. SpeakUp Media was also experimenting, according to its Regional Vice-President’s statements, on a new product for the Tyrean market, without having revealed any details yet. All the above features were expected to be launched during 2018.

12. Soon after the establishment of the social media platforms in the country, Tyrean political and social activists realised the potential of these new platforms for broadcasting information to millions of local users, accessible and distributable within a matter of minutes. Very soon they started using the social networks to create online communities (“groups”) or start threads (series of posts on the same subject with the use of “hashtags” “#”, which allow users to easily track the posts with the same topic). Posts on FriendsLook, Whistler and SpeakUp, seen instantaneously by millions, offered an ideal base for anyone wishing to disseminate ideas, beliefs and information on a large scale - and were thus an ideal platform for Tyrean national radicalist communities, which had previously been struggling to make their view known to the wide audiences due to strict state supervision of the media in Tyrea.

13. Starting from sporadic posts at the end of 2016, national extremist groups in Tyrea commenced their campaign on social networks, publishing information about alleged instances of discrimination against one of the two major ethnic groups - Tatyar - calling for extremist, violent measures to put an end on it; these radicalist groups created tens of thousands of fake profiles on social media accounts which they used to spread misrepresentative and sometimes false information. FriendsLook, Whistler and SpeakUp were not the only platforms used by the radicalists. For instance, Wink, a local messenger application, widely popular before the advent of the three global networks but now waning due to its lack of interactivity, was swamped with messages automatically delivered to the users and containing links to radicalist posts. Another one was TruthSeeker, which was created by the Respondent in February 2014,
in the early days of the Media Law, to incentivise free speech and promote social awareness among the
citizens and allows for the sharing of news posts accompanied with a short expression of opinion or
correction of the facts in case they were incorrectly presented in the shared source.

14. In the beginning of 2017, street fights and violent altercations between the Minyar and the Tatyar were
reported for the first time since summer 2012. The situation developed slowly but the fights did not
abate, instead spreading all across the country. In the beginning of January 2018, over the course of New
Year celebrations in Tyrea, ethnic violence resulted in hundreds of casualties, with the subsequent
incidents of between Minyar and Tatyar groups being reported increasingly frequently.

15. On 12 January 2018, the Respondent passed Law 0808-L Amending the Law on Media and
Communications (“Law 0808-L”), which required all social networks to implement certain safeguards
aiding in identifying users and filtering content. More specifically, Law 0808-L required all social
networks to introduce a filtering algorithm preventing the dissemination of hate speech, request Personal
ID card details from both new and existing Tyrean users, and provide to the competent authorities of
Tyrea access to such Personal ID card details and correspondence among users (if the relevant social
network had private messaging features). The decree introducing the new law (the “Promulgation
Decree”) provided for a 60-day deadline for compliance with the new requirements, including for the
algorithm to be developed and implemented and existing users identified.

16. The requirement to implement a filtering algorithm was generally regarded as fair and justifiable, and
the Claimants already had in place certain generic filters used worldwide both for examining content
and detecting fake accounts, as well as manual complaint-based systems for dealing with incidents like
hate speech. The Claimants immediately set to work on establishing tailored mechanisms for combating
the spread of hate speech among Tyrean language users. The Claimants initially believed the term of 60
days to be a feasible time frame for the task, as, although the majority of the work could be completed
within 45 days, two additional weeks would be required for testing and adjustment, which was crucial
in light of nuances of Tyrean language.

17. The need to provide to Respondent’s authorities access to Tyrean users’ Personal ID card details and
correspondence between users, however, was controversial. SpeakUp in particular, belonging to the
International Free Journalism League and advertising its goal as promoting free speech all around the
world, strongly objected to the new requirement. In the opinion of SpeakUp’s CEO cited by “The Digital
World” magazine, the new rule “could easily become a wolf in sheep’s clothing, being conveniently
vague and sufficiently broad to allow the Tyrean government to revert ever so subtly to the censorship
it has always been so fond of and persecute anyone opposing it”. Whereas FriendsLook and Whistler
implemented the required identification and message storing, SpeakUp delayed the development of that
capability and engaged in communication with the Tyrean parliament’s members and Tyrean
government hoping to negotiate that the requirement either be eliminated or restricted to a limited list of particular circumstances when access had to be provided.

18. SpeakUp managed to procure an official audience with the Minister for Telecommunications, Information Technology and Mass Media of Tyrea, Fredrik Woodlant, on 28 January 2018. In the course of the meeting attended by, among others, the Regional Vice-President of SpeakUp Saraid Parlante, Mr. Woodlant discussed the new requirements and admitted importance of allowing sufficient time for testing the algorithm.

19. Meanwhile the situation across Tyrea worsened rapidly, with the police struggling to stem the rampant violence spreading across the country. 30 days into the term for compliance Respondent decided it had to act without delay. The President’s new decree dated 11 February 2018 reduced the deadline for compliance with the new requirements to 45 days, setting the deadline for compliance to 28 February 2018. The timeline reduction left Claimants with only 10 more days to deploy the filtering algorithm (including its development and testing). Claimants complied with the deadline, but the algorithms implemented turned out to be not entirely effective. Among the reasons for failure of the algorithms to achieve the goal, the experts cited by the media listed specific features of Tyrean language and the lack of testing. It soon became apparent that the algorithm had loopholes that failed to sufficiently prevent hate speech posts from appearing and, on the other hand, often blocked material with no connection to extremist propaganda, for instance, on multiple occasions blacklisting articles on domestic abuse. As the new algorithm flagged an overwhelming number of posts and accounts for review by human analysts, which Claimants’ support teams struggled to deal with in a timely fashion, and additionally took longer to flag fake accounts than it took for users to create them, it became clear that the Claimants’ algorithm could not succeed in curbing the spread of misinformation.

20. The user identification mechanism was finally implemented by all Claimants in due time; however, compliance with the reduced deadline would potentially lead to Claimants having to block those accounts for which no Tyrean Personal ID Card details had been provided in a timely manner. Unwilling to enforce such an unpopular measure, Claimants decided to keep the initially set deadline for Personal ID card data to be provided by users. They refrained from blocking such unverified existing accounts for a time, and in the end this measure was never implemented.

21. Citing failure of the algorithm and violent incidents spinning out of control (such as clashes erupting in the Respondent’s capital despite heavy security presence) and a resultant fear of slipping back into civil war as the reasons behind its actions, the Respondent decided to block FriendsLook, Whistler and SpeakUp entirely. On 28 February, 1 March and 2 March 2018, the TCA, after investigating the matter, issued the ordinance blocking the Claimants’ websites for non-compliance with the new legal requirements for social networks.
22. Other platforms used by radicalists were, however, not blocked. The TCA explained this by stating that the other social networks being less popular and convenient for spreading hate speech were therefore, less dangerous. In the case of Wink, Respondent’s authorities held that the network was not at fault for the algorithm’s inefficiency, as “spam” messages only contained short links and were consequently out of the filter’s reach. Respondent never explained why TruthSeeker was not blocked, but speculations vary, ranging from the obvious lack of popularity of the network (nearly five times fewer users than in case of FriendsLook) to, in the words of one Tyrean digital daily newspaper, “the Government being reluctant to terminate its own creation”.

23. The press in Tyrea and worldwide generally engaged in lengthy speculations as to the reasons for blocking the social networks. Among the publications that caused the most heated disputes was an article by digitalera.com, written by investigative journalist Margareta Harison, who is famous for her revelationist works, some of which have proven to be inaccurate in the past. Citing a source “close to the Tyrean government”, the article claimed that on 7 February 2018 a secret meeting was held by the Tyrean President and selected members of the Tyrean government, where it was decided that blocking the websites would be a quick and efficient measure compared to employing the filtering algorithms.

24. Considering the unprecedented nature of their claims and the similarity of their positions, Claimants decided to join forces and submit a joint claim. It is also reported that joining the claims was required by a third party funding agency Claimants had approached for financing the costs of arbitration, as it viewed the joint claim more likely to succeed. On 29 June 2018, the Claimants submitted their request for arbitration to the ICSID Secretariat.

25. Arbitration, however, was regarded by Claimants as too slow to restore their rights. In parallel to the arbitral proceedings, Claimants engaged a public relations firm and resorted to other “unofficial” measures, (some of which were confirmed by evidence and some not), to, in the words of Whistler’s spokesperson, “expedite bilateral resolution of the disagreement with Tyrea”.

26. As the affair attracted increased publicity, Respondent, aware of the potential implications to its international image and to its bid to host a World Expo, filed its request for provisional measures to stop Claimants from publicising and aggravating the dispute.
AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS
BETWEEN THE REPUBLIC OF TYREA AND THE FEDERATION OF NOVANDA

THE GOVERNMENT OF THE REPUBLIC OF TYREA,
and
THE GOVERNMENT OF THE FEDERATION OF NOVANDA,

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection, under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

ARTICLE 1

For the purposes of the present Agreement:
(a) the term "investments" shall comprise every kind of asset and more particularly, though not exclusively:
   i. movable and immovable property as well as any other rights in rem in respect of every kind of asset;
   ii. rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
   iii. title to money, goodwill and other assets and to any performance having an economic value;
   iv. rights in the field of intellectual property, technical processes and know-how;
   v. rights granted under public law, including rights to prospect, explore, extract and exploit natural resources.
(b) the term "nationals " shall comprise with regard to either Contracting Party:
   i. natural persons having the nationality of that Contracting Party in accordance with its law;
   ii. without prejudice to the provisions of (iii) hereafter, legal persons constituted in accordance with the law of that Contracting Party;
   iii. legal persons controlled, directly or indirectly, by nationals of that Contracting Party, but constituted in accordance with the law of the other Contracting Party,
(a) the term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

ARTICLE 2

Either Contracting Party shall, within the framework of its law and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.
ARTICLE 3

1. Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals 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 nationals.

2. More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the investor.

3. If a Contracting Party has accorded special advantages to nationals of a third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.

5. 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 a regulation, whether general or specific, entitling an investment by an investor of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such a regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

ARTICLE 4

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party, who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party under an agreement for the avoidance of double taxation, by virtue of its participation in a customs union, economic union or similar institution, or on the basis of reciprocity with a third State.

ARTICLE 5

The Contracting Parties shall guarantee that payments related to an investment may be transferred. The transfers shall be made in a freely convertible currency, without undue restriction and delay. Such transfers include in particular though not exclusively:

(a) profits, interest, dividends and other current income;

(b) funds necessary
   i. for the acquisition of raw or auxiliary-materials, semi-fabricated or finished products, or
   ii. to replace capital assets in order to safeguard the continuity of an investment;

(c) additional funds necessary for the development of an investment;

(d) funds in repayment of loans;

(e) royalties or fees;

(f) earnings of natural persons;

(g) the proceeds of sale or liquidation of the investment.
ARTICLE 6
Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

1. The measures are taken in the public interest and under due process of law;
2. The measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
3. The measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

ARTICLE 7
National of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

ARTICLE 8
If the investments of a national of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

ARTICLE 9
1. Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to the International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.
2. As long as the Republic of Tyrea has not become a Contracting State of the Convention as mentioned in paragraph 1 of this Article, disputes as referred to in that paragraph shall be submitted to the International Centre for Settlement of Investment disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility Rules).
3. Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article.
ARTICLE 10

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments, that have been made before that date.

ARTICLE 11

Either Contracting Party may propose to the other Party to consult on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

ARTICLE 12

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4. If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law, including in particular the present Agreement and any other relevant agreement between the Contracting Parties as well as the generally recognized rules and principles of International Law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute ex aequo et bono if the Parties so agree.

6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

ARTICLE 13

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures
constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Takodana, on 28 March 2000 in Tyrea.

For the Government of the Republic of Tyrea

GEORGE HARRIER

For the Government of the Federation of Novanda

PETER STRATOS
AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS
BETWEEN THE REPUBLIC OF TYREA AND THE UNION OF KITOA

THE GOVERNMENT OF THE REPUBLIC OF TYREA,

and

THE GOVERNMENT OF THE UNION OF KITOA,

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

[PARTS VERBATIM COINCIDING WITH THE TYREA-KITOA BIT INTENTIONALLY NOT REPRODUCED]

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Takodana, on 20 January 2001 in Tyrea.

For the Government of the Republic of Tyrea

GEORGE HARRIER

For the Government of the Union of Kitoa

JACK OSPREY
In the arbitration proceeding between

FriendsLook plc

SpeakUp Media Inc.

and Whistler Inc.

(Claimants)

v.

Republic of Tyrea

(Respondent)

ICSID Case No. ARB/18/155

PROCEDURAL ORDER NO. 2

Members of the Tribunal
Dr. Gabriella Utterson, President of the Tribunal
Dr. Henry Jekyll, Arbitrator
Mr. Edward Hyde QC, Arbitrator

Secretary of the Tribunal
Ms. Mary Reilly

18 June 2019
After extensive consultations with the parties following an exchange of requests for clarification concluded on 1 June 2019, the Tribunal has made the following determinations supplementing those of its Procedural Order No. 1 of 1 February 2019:

1. **Does the proven expenditure refer to Claimants’ initial investment or simply the cost incurred by Claimants in 2018?**

   In general, Direct Damages refer to some of the Claimants’ initial investment in Tyrea and the Cost headings to the costs incurred throughout the years of its operations there.

2. **Do Claimants have the established business plan for market expansion, with market analysis, sales strategies and financial projections?**

   Regarding the Claimants’ plans for expansion to other foreign markets, it is confirmed that the Claimants were planning on completing the expansion to neighboring markets by 2022.

3. **Is there any data on the Claimants’ previous financial performance when entering a new market?**

   When FriendsLook entered the market of Fitzrovia (a developed country with approximately 30 million inhabitants) in 2013, it showed profits that amounted to 25% of revenue, a percentage that increased to 35% in 2018.

   In the case of Whistler and SpeakUp entering new markets, both companies showed profits that were within the 10% of revenue margin, which steadily increased year by year.

4. **Did the Claimants continue to work on the algorithm after the issuance of the Ordinances blocking their social media platforms?**

   Following the blocking of their platforms and seeing that any meetings with Tyrean authorities to seek assurances were in vain, the Claimants decided to put a temporary halt to the development of the algorithm to avoid further costs.

5. **Following the blocking of the Claimants’ websites, how significantly, if at all, did the ethnic tension in Tyrea decrease?**

   On 15 March 2018, a violent clash between Tyrea’s ethnic groups took place in the country’s capital, Takodana, in which police forces intervened. The protesters, in addition to allegations
against one another, also alleged that the government had cracked down on their freedom of speech and expression. There was a significant number of casualties.

Since that incident, a general de-escalation of tensions has been observed in Tyrea’s largest cities. Yet, the situation in the country’s rural areas remains relatively unchanged.

Novanda and Kitoa are both parties to the Vienna Convention on the Law of Treaties. Tyrea is not a party to the said convention; however, it is not known to be a persistent objector to any rule of customary international law relating to the law of treaties.

7. Was information about Tyrea’s denunciation of the ICSID Convention made public?
The denunciation of the ICSID Convention was made public by Tyrea on the date the notice of denunciation was sent, i.e., on 5 January 2018.

8. Does Tyrean legislation provide for collective claims?

9. Do Claimants have any common shareholders?
In the beginning of 2018, Expedia, FinanceHub and TurboFin, three international financial corporations, cumulatively owned 9.5% of FriendsLook’s shares, 5% of Whistler’s shares and 4.5% of SpeakUp’s shares.

10. Which international instruments on human rights is Tyrea party to?
All three countries, Novanda, Kitoa and Tyrea are parties to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Particularly, Tyrea ratified both the ICCPR and the ICESCR on 1 December 2014.

11. Has Tyrea changed its treaty status in either of its BITs with Novanda or Kitoa?
Both Tyrea-Novanda and Tyrea-Kitoa BITs remain in force. There has been no known move on Tyrea’s part to initiate termination of either of the mentioned BITs.
12. **When did the Claimants wind down all their operations in Tyrea?**

   The Claimants gradually wound down their operations in Tyrea in the second half of April 2018.

13. **Are the media titles (and other materials) listed in paragraph 3 of the Request for Provisional Measures (pages 36-37 of the Case) still in circulation in Tyrea?**

   The publications referred to in Respondent’s Request for Provisional Measures were all digital and are still accessible online.

14. **Were there any ways for Tyrean users to access Claimants’ websites regardless of the blocking?**

   The blocking of Claimants’ websites could be superseded by a limited number of paid VPNs. However, it is known that VPNs are not widely used by internet users in Tyrea.

15. **Did Respondent take any other measures apart from blocking the websites to manage the ethnic conflicts?**

   Respondent implemented several measures aimed at curbing ethnic clashes and violence in its territory. Security was tightened, especially in cities, and the presence of police increased. Official information sources, including governmental media, published materials dispelling fake news, and activists supported by the government used TruthSeeker to refute false rumours. Further, Respondent launched a national program “Tyrea for All”, which involved developing legislative initiatives targeting discriminatory actions and fostering dialogue between the ethnic groups and the State to promote mutual understanding and search for amicable resolution of conflicts.

16. **After the Claimants’ platforms were blocked, did the other unblocked social media platforms increase in their popularity?**

   There has been no known substantial increase in other social media platforms’ popularity despite their promotional and marketing efforts.

17. **Valuation**

   The Tribunal notes that the parties should at Stage I of the proceedings limit their arguments to the discussion of the issues mentioned in Procedural Order No. 1, para. 6.2(e), i.e. the best method of
damages valuation and any speculation issues, and not provide any exact calculations or quantifications at this state of the proceedings.

18. **Corrections**

The Tribunal notes that several corrections of typographical errors have been made in red font to the case file.

2000

[Signed]  
Gabriella Utterson  
President of the Tribunal

2005  
[Signed]  [Signed]  
Henry Jekyll  Edward Hyde QC  
Arbitrator  Arbitrator
In the arbitration proceeding between

FriendsLook plc

SpeakUp Media Inc.

and Whistler Inc.

(Claimants)

v.

Republic of Tyrea

(Respondent)

ICSID Case No. ARB/18/155

PROCEDURAL ORDER NO. 3

Members of the Tribunal
Dr. Gabriella Utterson, President of the Tribunal
Dr. Henry Jekyll, Arbitrator
Mr. Edward Hyde QC, Arbitrator

Secretary of the Tribunal
Ms. Mary Reilly

2 September 2019
After extensive consultations with the parties following an exchange of requests for clarification concluded on 1 June 2019, the Tribunal has made the following determinations supplementing those of its Procedural Order No. 1 of 1 February 2019 and Procedural Order No. 2 of 18 June 2019:

1. **In the Claimants’ expert report, what are the risks taken into account for the 2018 projections?**

   The risks taken into account by the Claimants’ expert for the 2018 projections and the use of WACC included (but were not limited to) country risk, tax and currency risk, business risk, and force majeure risk.

2. **Was there any international reaction to the blocking of the Claimants’ websites?**

   Following the blocking of the Claimants’ websites, a number of international organizations (including some within the Free Expression Network), NGOs and activists advocating for freedom of speech publicly condemned the measure at the beginning of 2019 and sparked discussion around the situation in Tyrea and freedom of speech in general.

3. **Did Tyrean officials make any public statements regarding Tyrean intention to denounce ICSID Convention before sending a notice of denunciation to the World Bank?**

   There were deliberations in the Tyrean Parliament on the possibility of denunciation of the ICSID Convention starting from November 2017.

4. **Did Tyrea, Novanda and Kitoa ratify the New York Convention 1958?**

   Tyrea, Novanda and Kitoa have ratified the New York Convention 1958.

5. **How is the access to the internet in Tyrea? Are there differences between cities and rural areas?**

   More than 50% of Tyreans have unobstructed access to the internet, mainly because they reside in cities. Access to the internet in rural areas is still possible, but there are some difficulties due to the lack of the necessary infrastructure, which may cause outages and connection glitches.
6. What are the percentages of rural and urban population in Tyrea?

The percentages of rural and urban population in Tyrea are 50% for each category.

7. Regarding the Claimant's Unofficial Measures (Uncontested Fact 25) which measures have been confirmed by evidence?

The Claimants have accepted the responsibility for publishing the Request for Arbitration in The Global Herald. However, the Claimants’ role in publication of other news articles referred to by the Respondent in its Request for Provisional Measures has not been proven by any evidence.

8. In light of the PO2 statement that "it is known that VPNs are not widely used in Tyrea", does the situation change after the blocking of Claimants' media platforms?

There was a slight increase in the use of VPNs following the blocking of Claimants’ media platforms.

9. Were new articles published after December 2018?

Since 1 January 2019, Respondent is aware of four articles published as of the date of this Procedural Order No. 3, the most recent on 14 August 2019. However, none of Claimants has accepted responsibility for any of them.

10. Are Tyrea, Novanda, Kitoa members of the United Nations?

Yes, Tyrea, Novanda, Kitoa are members of the United Nations.

11. Were Wink and TruthSeeker subject to punishment in the form of fine under Tyrean Criminal Code for non-compliance with the Law 0808-L?

There are pending criminal proceedings regarding the imposition of fine under Tyrean Criminal Code on Wink and TruthSeeker.

12. Were the measures taken by Tyrea to manage the ethnic conflict taken before or after the blocking of Claimants’ platforms? If they were only done after the blocking, what were the measures taken before the blocking?
Immediately after the situation started to involve violence, Respondent assigned additional police forces to control the conflict. The fake news correction campaign gained momentum at approximately the time of the blocking decrees, and the program “Tyrea for All” was launched in May 2018.

13. Expert reports

Teams are to consider the expert reports as submitted to the Tribunal by the parties. Teams are not expected to proceed with (re)calculations for the purposes of the damages claim. The Tribunal reserves the right to request, at the Quantum stage, additional or updated expert reports from the Parties, should the need arise, and the Parties reserve the right to submit amended or clarified expert reports at the Quantum stage.

14. Corrections

The Tribunal notes that several corrections of typographical errors have been made in red font to the case file.

[Signed]

Gabriella Utterson
President of the Tribunal

[Signed]

Henry Jekyll
Arbitrator

Edward Hyde QC
Arbitrator

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