

Case Note

THE EMPIRE STRIKES BACK: CASE NOTE ON THE CJEU DECISION IN *SLOVAK REPUBLIC V. ACHMEA BV*, MARCH 6, 2018

*Janice Lee**

ABSTRACT

On Mar. 6, 2018, the Court of Justice for the European Union (hereinafter “CJEU”) issued a decision in Slovak Republic v. Achmea, ruling that the arbitration clause in a bilateral investment agreement (hereinafter “BIT”) between the two European Union (hereinafter “EU”) Member States therein is incompatible with EU law. The CJEU found that an arbitral tribunal formed under the BIT could be called upon to interpret EU law in a dispute between investors and States, and yet it is not a “court or tribunal of a Member State” entitled to make a reference to the CJEU for a preliminary ruling. This Case Note will discuss the background of the decision and how the CJEU arrived at its conclusion. It will further briefly outline some of the potential implications of the decision for current and future investment arbitrations between EU Member States.

KEYWORDS: *investment arbitration, Achmea, EU Law, ISDS, autonomy, BITs*

* LLM, Queen Mary University of London; Juris Doctor, University of the Philippines. Janice is a qualified attorney specialising in international dispute resolution and public international law. The author can be reached at: janice.chualee@gmail.com.