

SVEA COURT OF APPEAL
Department 02
Division 020101

JUDGMENT
22 April 2016
Stockholm

Case No.
T 7186-14

CLAIMANT

Australian Media Properties Pty Ltd, 69 131 184 408
c/o Brown Charman Shaw Pty Ltd.
Att: Mrs. Elizabeth Charman
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Australia

Counsel:

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RESPONDENTS

Bonnier International Magazines AB, Reg. No. 556072-0293
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Counsel: Advokat Tomas Pleiner
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MATTER

Challenge of arbitration award

CHALLENGED ARBITRATION AWARD

Arbitration award rendered in Stockholm on 24 April 2014 in case V (2013/028) of the Arbitration Institute of the Stockholm Chamber of Commerce

JUDGMENT OF THE COURT OF APPEAL

1. The Court of Appeal rejects the motions of Australian Media Properties Pty Ltd.
2. Australian Media Properties Pty Ltd is ordered to compensate Bonnier International Magazines AB for its litigation costs in the amount of SEK 394,000, all comprising costs for

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legal counsel, plus interest pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.

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BACKGROUND

The Bonnier group operates in the media sector, including in the segments of TV, daily newspapers and magazines. Approximately 300 companies form part of the Bonnier group, and Bonnier International Magazines AB (BIM) is one of these companies.

Australian Media Properties Pty Ltd (AMP) have published local editions of the magazines Popular Science and Science Illustrated in Australia and New Zealand under license from BIM. Differences of opinion concerning the scope of the licenses arose between the parties. As of the summer of 2011, AMP withheld payments of the license fees. BIM terminated the license agreements for the magazines in the summer of 2012.

Through an agreement entered on 21 December 2012, BIM and AMP agreed that all disputes between them should be resolved by arbitration pursuant to the Rules of Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce (the Arbitration Rules and the arbitration institute or the SCC, respectively).

AMP requested arbitration on 8 February 2013 and claimed compensation for losses. BIM disputed the claim and for its part claimed compensation for unpaid license fees. AMP appointed AA as arbitrator, and BIM appointed BB as arbitrator. The arbitration institute appointed CC as chairman.

An arbitration award was given on 24 April 2014, SCC V (2013/028). The arbitral tribunal granted BIM's motions in full, rejected AMP's motions, awarded BIM full compensation for its litigation costs and resolved that AMP should bear the costs for the arbitration proceedings.

MOTIONS BEFORE THE COURT OF APPEAL

AMP has moved that the Court of Appeal shall annul the arbitration award in its entirety.

BIM has disputed AMP's motions.

The parties have claimed compensation for their respective litigation costs.

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THE PARTIES' RESPECTIVE GROUNDS

AMP

Disqualification of arbitrators BB and CC

There were circumstances which called into question the impartiality and independence of arbitrators BB and CC. Neither BB nor CC met the criteria set forth in Section 8 of the Swedish Arbitration Act and article 14(1) of the SCC's Arbitration Rules on impartiality and independence and they were therefore not qualified to serve as arbitrators.

In violation of Section 9 of the Swedish Arbitration Act and article 14(2) and (3) of the SCC's Arbitration Rules, BB and CC failed to disclose the circumstances which could have disqualified them from serving as arbitrators as the said circumstances could have called into question their respective impartiality and independence. Further, both BB and CC have in violation of article 14(2) of the SCC's Arbitration Rules confirmed their respective impartiality and independence in writing, without disclosing the possible circumstances that could have called their respective impartiality and independence into question. At least when seen in combination with the said failure to disclose, such circumstances have been at hand so as to disqualify BB and CC from serving as arbitrators.

AMP's knowledge of the disqualifying circumstances

AMP became aware of the circumstances that could call into question the impartiality and independence of BB and CC only after the arbitration award had been rendered. If AMP had become aware of the disqualifying circumstances during the arbitration, AMP would have objected that BB and CC should be disqualified to the arbitration institute. This would in all likelihood have led to the arbitration institute's disqualification of BB and CC as arbitrators, if they had not already removed themselves voluntarily.

The arbitration award shall be annulled pursuant to Section 34 of the Swedish Arbitration Act

Because BB and CC have been disqualified from serving as arbitrators, or at least one of them has been disqualified, the arbitration award shall be annulled pursuant to item 5 of the first paragraph of Section 34 of the Swedish Arbitration Act.

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AMP has not lost the right to reference the aforementioned circumstances by participating in the arbitration without objecting or otherwise by not referencing these circumstances.

BIM

There were no circumstances at hand that could have called the impartiality or independence of BB and CC. Thus, there are no grounds to annul the arbitration award. Moreover, BB and CC were under no obligation to inform on the allegedly disqualifying circumstances referenced by AMP.

THE PARTIES' FURTHER DETAILS

AMP

Further details on the circumstances which disqualified BB

On 7 March 2013, BB confirmed to the Secretariat of the SCC that he was impartial and independent, without providing any additional information. He did not provide any such information during the arbitration either.

In a CV submitted by BB to the SCC's Secretariat at the same time as the above confirmation, BB disclosed seven assignments he had undertaken in addition to his tenure as professor at Stockholm University. Therein, BB did not inform on the fact that he, as of a couple of years, was on the Board of Directors of the Stockholm Centre for Commercial Law (SCCL) at Stockholm University or that since 2004 was a member of, and since 2007 is the head of, SCCL's department for media law.

After AMP had received the arbitration award on 24 April 2014, AMP became aware that, amongst other things, BB had been retained as an expert witness by C More Entertainment AB in a criminal case before Hudiksvall District Court, which involved linking to ice hockey games, and had issued legal opinions for C More Entertainment AB in that case. At that time C More Entertainment AB was a subsidiary of TV4 AB (at that time TV4 AB held 65 percent of the shares), which in its turn was a subsidiary of Bonnier AB. Further, it came to light that BB is a member of the Board of Directors of SCCL, the head of its department for media law and that the SCCL, according to information provided on its web page, had received donations from, amongst others, Bonnier AB and TV4 AB.

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On 20 May 2014 AMP objected to the impartiality of BB to the Secretariat of the SCC. On the following day the Secretariat informed that it could not review objections relating to disqualifications of arbitrators after an arbitration award had been given.

The Secretariat of the SCC forwarded AMP's objection to BB. In a letter of 26 May 2014, BB responded to the objection. In the letter BB stated, amongst other things, that he had been a member of the SCCL since a few years, that he had been unaware of any donations from the Bonnier group to Stockholm University and further that the head of the SCCL was unaware that the SCCL had received any donations from the Bonnier group. In a letter of 12 June 2014 from BB to AMP, BB has reiterated that there were no circumstances with respect to the SCCL which he could or should have mentioned in the arbitration.

More on BB's assignment for the SCCL

The SCCL's annual report for 2006 provides, amongst other things, that the center had received information that Bonnier AB, TV4 AB and Proventus AB had agreed to donate funds for a guest professorship in media law. The annual report for 2007 provides that the center during the said year had received funds from the aforementioned companies in the amount of SEK 210,000, and a presentation appended to the annual report states that the center had received a donation covering a three year period from the aforementioned companies. The presentation further clarifies that BB at that time was the head of the division for media law.

The annual reports for the years 2010, 2011 and 2012 provide that the center during these years had received contributions from Karl-Adam Bonniers Stiftelse (*Eng: trust*) in the amounts of SEK 300,000, SEK 150,000 and SEK 225,000. The annual reports for the years 2011 and 2012 were signed by BB in his capacity as member of the center's Board of Directors.

Karl-Adam Bonniers Stiftelse is closely connected to the Bonnier family and the Bonnier group. Karl-Adam Bonnier is a member of the Bonnier family, which owns and controls the Bonnier group. Tor Bonnier is the chairman of Karl-Adam Bonniers Stiftelse since the year 2012. Tor Bonnier is the son of Karl-Adam Bonnier and the cousin of Jonas Bonnier, who was the CEO of Bonnier AB until the end of 2013. Both Tor and Jonas Bonnier are on the

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Board of Directors of the parent company of the Bonnier group, Albert Bonnier AB. The CEO of Albert Bonnier AB is XX, who has also served on the Board of Directors of BIM.

The recurring substantial contributions from various entities in the Bonnier group to the SCCL and its division for media law are such that they call BB's impartiality and independence into question in any arbitration in which a company in the Bonnier group is a party. Thus, BB should have declined BIM's request that he serve as arbitrator. At the very least, BB should have disclosed the donations. By failing to do so, BB has deprived AMP the opportunity to assess the circumstances and to have the matter reviewed by the SCC.

AMP does not attest BIM's account of how the donations from Bonnier AB, TV4 AB and Karl-Adam Bonniers Stiftelse were dealt with by Stockholm University.

More on BB's assignment for C More Entertainment AB

C More Entertainment AB is a company which, just as BIM, is a member of the Bonnier group. As mentioned above, C More Entertainment AB retained BB in 2010 as an expert witness in a criminal case, and BB produced two legal opinions on behalf of C More Entertainment AB, which C More Entertainment AB referenced in the criminal case. The case was appealed to the Court of Appeal and subsequently to the Supreme Court, which granted leave to appeal, and resolved to request a preliminary ruling from the European Court of Justice. The European Court of Justice rendered its preliminary ruling in March of 2015. The Supreme Court gave its judgment on 29 December 2015 (case No. B 3510-11).

E-mail correspondence between BB and the counsel to C More Entertainment AB establishes that BB had provided advice to C More Entertainment AB at the time when the criminal case was reviewed by the Court of Appeal, the Supreme Court and the European Court of Justice, i.e. during the three years preceding the point in time in the spring of 2013 when he was appointed as arbitrator in the dispute between AMP and BIM, as well as during the time when the arbitration proceedings were open (the arbitration proceedings were open from February of 2013 until April of 2014). Moreover, it establishes that BB had advised on procedurally tactical issues. Finally, it establishes that BB had contacts concerning the matter of dispute with C More Entertainment AB's external and in-house counsel.

BB followed the case with great interest through all instances. In an article in NIR No. 5/2013 he provided a detailed account of the questions posed by the Supreme Court to the

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European Court of Justice. As late as the week before the main hearing in the arbitration between AMP and BIM, BB participated in a seminar in which the criminal case was discussed. Intellectual property law organizations in which BB is active, such as SFU and ALAI, have, just as the Bonnier group, a deep interest in the outcome of the criminal case.

BB's assignment for C More Entertainment AB and his academic interest in the outcome of the criminal case are circumstances of such nature that they call his impartiality and independence into question. Mr. BB should have disclosed his participation in the criminal case and his interest in the outcome of the said case.

More on the circumstances which disqualify CC

On 24 April 2013, CC confirmed to the Secretariat of the SCC that he was impartial and independent without providing any additional information. He did not disclose any such information during the arbitration either.

The register of the Swedish Bar Association's web page stated during the time of the arbitration that CC was the sole proprietor of law firm CCC, but that he shared office space with the law firms DDD, EEE and FFF. The information in the register on shared offices was incorrect. CC instead shared offices with advokat GG and advokat HH.

CC, GG and HH operate their respective legal consulting businesses while sharing offices at [address omitted], with a shared secretary and a shared fax number. Their respective law firms own one third each of a fourth company (the Office Company). CC is a member of the board of the Office Company, GG is a deputy director and HH is an authorized representative thereof. The annual report for the financial year 2013 of the Office Company provides, amongst other things, that the business objective of the company is to lease premises and provide office services to law firms operating from shared premises.

During 2012, GG was legal counsel to Jultidningsförlaget Semic AB in a dispute before the Swedish Market Court. Jultidningsförlaget Semic AB is a member of the Bonnier group. Further, GG has provided legal advice to the Bonnier group in general. Amongst other things, GG has been the data protection officer of the entire Bonnier group since at least the year 2009.

AMP objected to CC's impartiality to the Secretariat of the SCC on 20 May 2014. On the following day the Secretariat informed that the SCC cannot review such objections after the

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arbitration award has been given. The Secretariat of the SCC forwarded AMP's objection to CC. In a letter of 26 May 2014, CC informed that he had had a conversation with GG prior to accepting the assignment and that GG then had stated that he had not had any assignments for the companies involved in the arbitration and that he had no knowledge of those companies.

In a letter to AMP of 16 June 2014 GG stated that since 2005 he leases an office from the Office Company and that GG and HH now also do so. According to CC, the tenants have no insight into the other tenants' respective businesses and, for example, have their own separate computers. According to CC, he has not during the time he has leased his office from the Office Company deemed himself obliged to disclose the fact that he shares offices in connection with accepting assignments as arbitrator.

According to AMP, the fact that CC and GG have shared offices and have business relations through the jointly owned Office Company, in conjunction with GG's long-lasting and substantial assignments for many companies within the Bonnier group, are such circumstances that call CC's impartiality and independence into question. CC should have disclosed these circumstances.

More on the Bonnier group

BIM is a wholly owned, currently inactive, subsidiary within the Bonnier group. The members of BIM's Board of Directors are XX, YY and ZZ. Circumstances of which any of these individuals have knowledge form part of BIM's knowledge. XX, YY and ZZ are senior managers within the Bonnier group and have been directors on other boards in the Bonnier group. Thereby, BIM has knowledge of the operations of other Bonnier group companies.

XX is the CEO of Albert Bonnier AB, authorized representative of Bonnier AB, member of the board of C More Group AB, C More Entertainment AB and numerous other Bonnier group companies.

YY is the head of the business area Growth Media within the Bonnier group and is a member of the Bonnier group management. Previously YY was the CEO of Bonnier Tidskrifter AB. YY is also an authorized representative of several other companies within the Bonnier group. One of YY's assignment is as member of the board of Toca Boca AB,

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which is a wholly owned subsidiary of the Bonnier group, and which has had its base of operations at the same offices as BIM, at Kungstensgatan 23 B in Stockholm.

ZZ is an authorized representative of Bonnier AB, the CFO of the Bonnier group and is a member of the management of the Bonnier group. He's a member of the board of Tidnings AB Marieberg, TV4 AB and several other companies within the Bonnier group.

BIM

Alleged disqualification of BB

BB's assignment for C More Entertainment AB

It is undisputed that BB produced two legal opinions at the request of the law firm QQQ and appeared as an expert witness in the criminal case referenced by AMP, and in which the law firm QQQ represented C More Entertainment AB. BB gave his testimony before the District Court in October of 2010. BIM cannot attest that BB has advised C More Entertainment AB in any other way than by producing the said legal opinions and testifying before the District Court.

The legal opinions and the testimony related to matters that are unrelated to the dispute between BIM and AMP which was resolved through the arbitration award. The legal opinions were mainly an account of BB's opinions on certain legal matters, which he had previously expressed in other contexts.

The fact that BB has followed the aforementioned criminal case with great interest, that he was heard as an expert witness in that case and that he has produced two legal opinions relating to another matter for a different company within the group to which BIM belongs are not circumstances which call his impartiality into question. These circumstances did not prevent BB from accepting an assignment as arbitrator in 2013 in a dispute with BIM as respondent.

BB's assignment at the SCCL

BB is employed by Stockholm University and has since 24 June 1999 been permanently employed as professor of civil law. It is undisputed that BB has been a member of the SCCL's Board of Directors since 30 June 2011.

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The SCCL has never applied for, received or otherwise managed any funds donated by Bonnier AB, TV4 AB or Proventus AB and is, in fact, not in a position to do so. It is another matter that individual researchers can apply for external financing of the research they intend to carry out through the SCCL. If such an application is granted, the financing is channeled through the university, which is able to pay the salary of the researcher through the granted funds.

The funds described in the annual report for 2006 related to NN's guest professorship. The professorship was for 20 percent of a full time employment and NN succeeded to secure a financing undertaking from Bonnier AB, TV4 AB and Proventus AB in 2006 for the years 2007, 2008 and 2009. During these years, the companies would finance NN's salary with SEK 70,000 per company per year. The funds were paid in 2007 to the law faculty at Stockholm University. In November of 2007, NN was appointed as Parliamentary Ombudsman (*Swe: justitieombudsman*), and so the guest professorship was terminated and the funds remaining from the donations were repaid to the donors.

Also the funds mentioned in the annual reports for the years 2010-2012 were managed by Stockholm University. The funds related to salary costs for a post-doctorate researcher at Stockholm University, PP, who had applied for the funds from Karl-Adam Bonniers Stiftelse in 2009. That same year, the trust decided to support PP's research for a period of four years. The funds were paid to and received by Stockholm University.

Karl-Adam Bonniers Stiftelse has no commercial relations with BIM or other companies within the Bonnier group. Karl-Adam Bonniers Stiftelse is entirely independent of the Bonnier group.

The donations referenced by AMP were applied for by NN and PP and were entirely related to their respective work at Stockholm University. The donations were paid to Stockholm University and covered their respective salaries. It is Stockholm University, and not the SCCL, which has decided to employ NN and PP. BB had no involvement in their applications for these funds. BB was not aware of these applications and donations. BB is permanently employed by Stockholm University and is thus not at all dependent on private donations.

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The above circumstances did not prevent BB from accepting the assignment as arbitrator in a dispute with BIM as respondent in 2013.

Alleged disqualification of CC

CC is a Swedish advokat with more than 30 years' experience in arbitration and litigation. Prior thereto, he worked as, amongst other things, a judge at Södra Roslags District Court and as a clerk at the Supreme Court. He has served as arbitrator in more than 50 Swedish and international arbitrations.

CC operates his law firm at [ADDRESS OMITTED], through the law firm CCC. In the same offices, GG and HH also operate their businesses, through their own respective law firms.

CC, GG and HH are indirectly, through their respective law firms, owners of the Office Company which rents offices in the property at [ADDRESS OMITTED] from Dina Försäkringar AB.

CC has operated his business from the above address since 2005. GG joined him in the offices a few years later. HH moved into the offices and became an indirect owner, via his law firm, of the Office Company in September of 2012. Several other attorneys have operated their respective businesses out of the offices since the year 2005.

The Office Company is a service company, which provides the shareholders, i.e. the different law firms, with office services. Each attorney uses one office and the common areas, such as the reception/waiting area and conference rooms. The law firms share the costs for the premises, equipment, such as faxes, and one secretary. The attorneys have their own computers and phone subscriptions. The Office Company charges rent so that no profit arises in the Office Company.

The rationale for the different law firms' partial ownership in Office Company is that the property owner wishes to have one company as tenant, and the ownership in the Office Company has thus varied over time as different attorneys have moved into or out of the premises. Each attorney has at all times operated his/her own business separately from that of the other attorneys' with little to no knowledge of the assignments of the other attorneys. The attorneys do not cooperate on assignments or with respect to their finances.

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BIM does not question that GG has advised other companies within the Bonnier group as data protection officer to the extent maintained by AMP or that GG was counsel to Jultidningsförlaget Semic AB in a dispute before the Swedish Market Court during 2012. BIM cannot attest that GG has advised the Bonnier group in general or that he is the data protection officer for the entire Bonnier group. GG is not BIM's data protection officer and has not in any other way served as BIM's legal counsel.

Neither the fact that GG, HH and CC operate their respective law firms from the same address, nor the fact that they hold shares in the Office Company, constitute such circumstances so as to call Mr. M's impartiality and independence into question.

More on the Bonnier group

Bonnier owns companies with business in 16 countries and has more than 9,000 employees. BIM is one of several hundred companies within the Bonnier group. The companies do not have any insight the business of other group companies.

AMP's description of the various board memberships reflect only the situation as per 26 January 2015. BIM was active until 31 December 2013. AMP requested arbitration on 8 February 2013 and the arbitral tribunal gave its arbitration award on 24 April 2014.

ZZ was registered as member of the board of BIM on 20 April 2013, i.e. after BIM had ceased its operations. ZZ was registered as a member of the board of TV4 AB on 19 June 2012.

XX was registered as member of the board of C More Entertainment AB on 7 July 2014, as CEO of Albert Bonnier AB on 9 September 2013 and as an authorized representative of Bonnier AB on 15 February 2014. Thus, XX has not been a member of C More Entertainment AB's board prior to the arbitration was closed.

None of XX, YY or ZZ have been members of the board of Jultidningsförlaget Semic AB.

The main grounds for disqualification asserted by AMP relate to Jultidningsförlaget Semic AB and C More Entertainment AB. None of XX, YY or ZZ have had any assignments for these companies before the arbitration award was given.

GROUNDS OF THE COURT OF APPEAL

The case has been decided by only two judges, since the third judge was prevented from participating after the commencement of the main hearing (Section 4 of Chapter 2 of the Swedish Code of Judicial Procedure).

The investigation

The Court of Appeal has decided the case after holding a main hearing.

Upon AMP's request, XX and ZZ have been heard under oath and GG, BB, OO and RR have been heard as witnesses. Both parties have referenced documentary evidence.

Conclusion of the Court of Appeal

Legal starting points

The question in the present case is whether the arbitration award shall be annulled because of circumstances that could call the impartiality and independence of BB and CC in the arbitration into question.

The first paragraph of Section 8 of the Swedish Arbitration Act provides that an arbitrator shall be impartial. An arbitrator shall be relieved from his assignment upon a party's request if a circumstance is at hand, which could call the arbitrator's impartiality into question. Items 1-4 of the second paragraph of Section 8 of the Swedish Arbitration Act lists circumstances that should always be deemed to disqualify an arbitrator. The list is not exhaustive (see Government Bill 1998/99:35 p. 85 and p. 218). In the event that an arbitrator is disqualified based on a ground listed in Section 8 of the Swedish Arbitration Act, the arbitration award shall be wholly or partially annulled following a challenge from a party (item 5 of the first paragraph of Section 34 of the Swedish Arbitration Act).

The Supreme Court has in several cases stated that the provisions on disqualification of arbitrators serve the purpose of safeguarding the impartial rendering of justice and that it is important that they are applied such that an arbitrator falling under the scope of the said provisions may not participate in an arbitration, even if there are no grounds to assume that the arbitrator in the individual case would permit himself to be influenced by his relations with a party in his dealing with the case or in deciding its outcome. The determination of whether disqualifying circumstances are at hand shall be made on objective grounds. The

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requirement of objectivity and impartiality must be considered particularly high with respect to arbitrators, since errors in the evaluation of evidence or in the application of the law cannot serve as grounds for invalidation of an arbitration award. (See NJA 1981 p. 1205, NJA 2007 p. 841 and NJA 2010 p. 317.)

A person who is requested to serve as arbitrator shall immediately disclose all circumstances that, pursuant to Section 8 of the Swedish Arbitration Act, could disqualify the person from serving as arbitrator (Section 9 of the Swedish Arbitration Act). The obligation to inform is not sanctioned in the Act, and does not constitute autonomous grounds for challenge. The fact that an arbitrator has failed to disclose a certain circumstance could, however, be a contributing factor which in uncertain cases leads to the conclusion that disqualifying circumstances are at hand (see Government Bill 1998/99:35 p. 219). In NJA 2010 p. 317 the Supreme Court stated that the said statement should reasonably be interpreted to relate to pure borderline cases where the issue is particularly hard to resolve.

AMP has, with respect to the impartiality of Mr. M, referenced the Swedish Bar Association's Code of Conduct. Initially, the Court of Appeal wishes to point out that Section 3.8 of the Code of Conduct on conflicts of interest is not applicable when a member of the bar falls under the scope of other provisions thereon, such as when serving as arbitrator or as a judge at court. Thus, the determination of whether circumstances were at hand that could call Mr. M's impartiality and independence into question shall not be made pursuant to the Code of Conduct, but rather pursuant to the provisions of the Swedish Arbitration Act.

In the present case, BIM has referenced the Guidelines on Conflicts of Interest in International Arbitration issued by the International Bar Association (the IBA Guidelines). With respect to the IBA Guidelines, the Supreme Court has stated that although the court's review shall be made based on the provisions of the Swedish Arbitration Act, there can be grounds to glean to the application of such guidelines and rules against the background of the similarity of the rules and the often recurring international aspects (see NJA 2007 p. 841). The IBA Guidelines include a red, an orange and a green list. The red list provides circumstances which disqualify an arbitrator, the orange list provides circumstances which the potential arbitrator should disclose but which do not disqualify the arbitrator unless a

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party objects, and the green list provides circumstances which do not disqualify and for which there is no obligation to disclose.

Should BB be disqualified?

BB's assignment for C More Entertainment AB

The following is undisputed in the case. In 2010 BB produced two legal opinions for C More Entertainment AB (which at the time was owned to 65 percent by TV4 AB, in its turn owned by Bonnier AB) in a criminal case before Hudiksvall District Court concerning linking to ice hockey games and testified as an expert witness in the same case. BB did not disclose these circumstances in the arbitration. The two legal opinions and BB's testimony did not involve matters that relate to the dispute between AMP and BIM which was resolved by the arbitration award.

The investigation establishes that BB, also after judgment had been given in the criminal case, has had contacts with C More Entertainment AB and has followed the outcome of the case with some interest. However, the Court of Appeal finds that it has not been established that BB has advised C More Entertainment AB in any other way than by producing the two legal opinions and testifying in the criminal case.

Thus, what the Court of Appeal must determine is whether the fact that BB, upon the request of C More Entertainment AB, has produced two legal opinions and has testified as an expert witness in the criminal case, from the outside gives the appearance of ties that calls into question his impartiality as arbitrator, considering that C More Entertainment AB and BIM both belong to the Bonnier group.

The Court of Appeal notes that BB only produced legal opinions and testified as expert witness, and did not act as legal counsel or advisor to C More Entertainment AB (cf. the Section 3.1.1 of the orange list of the IBA Guidelines). The Bonnier group comprises several hundred companies, and no strong connections between C More Entertainment AB and BIM have been established, albeit that the companies belong to the same group. Moreover, BB's assignment for C More Entertainment AB was carried out a fairly long time ago and was of relatively limited scope. Further, it has not been established that BB at the time of the arbitration was aware that C More Entertainment AB had ties to the Bonnier group, and thus he cannot be deemed to have willingly failed to disclose that fact.

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Thus, the Court of Appeal concludes that BB's assignment for C More Entertainment AB does not, objectively, call his impartiality or independence with respect to the parties in the relevant arbitration into question. Moreover, BB has not been obliged to disclose his assignment for C More Entertainment AB.

BB's assignment at SCCL

In the present case, the following is undisputed. At the time of the arbitration, BB was a professor of civil law at Stockholm University, a board member of the SCCL and the head of the SCCL's department for media law. During 2007, Bonnier AB, TV4 AB and Proventus AB donated funds for the financing of NN's guest professorship in media law at Stockholm University and Karl-Adam Bonniers Stiftelse supported PP, who had received his doctorate at Stockholm University, during a four year period. BB did not disclose these circumstances during the arbitration.

Karl-Adam Bonniers Stiftelse is not a member of the Bonnier group. Already for this reason, the Court of Appeal concludes that the trust's financing of Mr. PP's research cannot, objectively, call into question BB's impartiality with respect to the parties in the arbitration. Moreover, BB was not obliged to disclose the funds granted by Karl-Adam Bonniers Stiftelse during the arbitration.

Thus, what the Court of Appeal must determine is whether the fact that Bonnier AB and TV4 AB, amongst others, had previously donated funds to the financing of NN's guest professorship in media law, a department headed by BB at the time of the arbitration, objectively, give the appearance of ties that call into question his impartiality as arbitrator, since Bonnier AB, TV4 AB and BIM are all part of the Bonnier group.

The Court of Appeal finds that it has not been established that the funds were paid from Bonnier AB and TV4 AB directly to the SCCL, or otherwise benefited the SCCL or BB. Thus, the financing of NN's employment cannot, objectively, call BB's impartiality with respect to the parties of the relevant arbitration into question. Moreover, BB was not obliged to disclose the payments.

Should CC be disqualified?

The following is undisputed in the present case. During the time of the arbitration, CC was the sole owner of the law firm CCC and shared offices with GG and HH. The office sharing

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included CC, GG and HH using certain common areas and shared a secretary. CC, GG and HH were also, through their respective law firms, shareholders in the Office Company. GG had been data protection officer for several companies within the Bonnier group and was during 2012 also legal counsel to Jultidningsförlaget Semic AB, which is a company within the Bonnier group, in dispute before the Swedish Market Court. The assignments GG had for companies within the Bonnier group were not related to the now relevant arbitration. GG has not disclosed the said circumstances during the arbitration.

The trust that an arbitrator is impartial can be deemed called into question if another attorney, who is a partner in the same law firm (such that the two attorneys share financial interests), has one of the parties in the arbitration as a client. However, it is more doubtful if the impartiality can be questioned if the assignment is unrelated to the dispute (see Stefan Lindskog, *Skiljeförfarande – En kommentar*, second edition, 2012, p. 422).

The Court of Appeal notes that in the present case it has not been maintained that GG has been the data protection officer for BIM or that he in any other manner has worked for BIM. Further, the extent to which GG has worked for other companies within the Bonnier group, his compensation for these assignments and the connection between BIM and other Bonnier group companies for which GG has worked have not been established in the present case. Moreover, nothing in the case indicates other than that CC, GG and HH have run their respective businesses separately and that they did not cooperate on assignments or with respect to their finances. The fact that they were joint shareholders in the Office Company and that they shared certain premises and thereto related costs cannot, according the Court of Appeal, entail that they shall be deemed to have been partners in the same law firm or shared financial interests (cf. Section 4.2.1 of the green list of the IBA Guidelines).

Against the above background, the Court of Appeal concludes that the fact that CC and GG at the time of the arbitration shared offices, and that GG had had certain assignments for companies within the Bonnier group cannot, objectively, be deemed to call CC's impartiality with respect to the parties in the arbitration into question. Moreover, CC was not obliged to disclose these circumstances.

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Summary and litigation costs

In sum, the Court of Appeal concludes that what has been maintained with respect to the loss of trust in the impartiality of BB and CC as arbitrators in the relevant arbitration cannot, whether separately or seen together, serve as grounds for annulment of the arbitration award. Thus, the motions of the claimant shall be rejected.

Upon this outcome AMP shall compensate BIM for its litigation costs. AMP has attested the claimed amount.

The judgment of the Court of Appeal may not, pursuant to the second paragraph of Section 43 of the Swedish Arbitration Act, be appealed.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Judge of Appeal KÅ and Deputy Associate Judge CJ, reporting.