

**IN THE MATTER OF AN ARBITRATION  
COMMENCED PURSUANT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF  
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
GOVERNMENT OF THE REPUBLIC OF ARGENTINA FOR THE PROMOTION AND  
PROTECTION OF INVESTMENTS, SIGNED DECEMBER 11, 1990**

**- and -**

**THE UNCITRAL ARBITRATION RULES**

**- between -**

**ICS Inspection and Control Services Limited (United Kingdom)**

**(the "Claimant")**

**- and -**

**The Republic of Argentina**

**(the "Respondent" and together with the Claimant, the "Parties")**

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**DECISION ON CHALLENGE TO ARBITRATOR**

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**WHEREAS** according to the Claimant, a dispute has arisen between the Parties under the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of The Republic of Argentina for the Promotion and Protection of Investments, signed December 11, 1990 (the "Treaty");

**WHEREAS** Article 8(3) of the Treaty provides for, among other things, the submission of disputes under the Treaty to an arbitral tribunal established under the UNCITRAL Arbitration Rules (the "UNCITRAL Rules");

**WHEREAS** in accordance with Article 5 of the UNCITRAL Rules, this matter is to be submitted to a three-member arbitral tribunal;

**WHEREAS** according to the Claimant, it sent a Notice of Arbitration dated June 26, 2009 to the Respondent;

**WHEREAS** by letter dated July 28, 2009 the Claimant appointed Mr. Stanimir A. Alexandrov as an arbitrator;

**WHEREAS** by letter dated August 7, 2009, in accordance with Article 9 of the UNCITRAL Rules, Mr. Alexandrov made the following disclosure to the Parties:

*1. My law firm, Sidley Austin LLP, has in the past represented PWC Logistics, which I understand may be, or may have been, an affiliate or a parent of ICS, the Claimant in this case. My firm no longer represents PWC Logistics. The last invoices issued to PWC Logistics date back to 2005. The total billings amounted to less than \$60,000. The representation had no relation to the present case (to the extent of my knowledge of the facts of the present case, which is based on the Notice of Arbitration). I was not involved in any way in that representation.*

*2. My law firm and I personally are involved in the ICSID case of Compañía de Aguas del Aconquija S.A. and Vivendi S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, where my law firm and I represent Claimants and are adverse to the Argentine Republic. The subject matter of the Vivendi dispute is not related to the subject matter of this case.*

*I do not believe that these circumstances affect my impartiality and independence as an arbitrator in this case.*

**WHEREAS** on August 12, 2009, the Respondent challenged the appointment of Mr. Alexandrov in these proceedings pursuant to Article 10(1) of the UNCITRAL Rules, which provides that, "[a]ny arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence" (the "Challenge");

**WHEREAS** on September 23, 2009, in accordance with Article 12(1)(c) of the UNCITRAL Rules, the Claimant requested that the Secretary-General of the Permanent Court of Arbitration ("PCA") designate an appointing authority to decide the Respondent's challenge to Mr. Alexandrov (the "Request");

**WHEREAS** by letter dated September 25, 2008, the PCA invited the Respondent to comment on the Claimant's Request by October 9, 2009;

**WHEREAS** by letter dated October 9, 2009, the Respondent first noted that Mr. Alexandrov had not yet replied to the challenge made by the Respondent, and that the designation of an appointing authority was therefore premature. The Respondent second outlined the characteristics that the appointing authority to be designated should meet, if an appointing authority were designated. These characteristics included that "the appointing authority should be a person or entity that has the capacity and obligation to state reasons for its decision on the Request for the Disqualification of Mr. Stanimir A. Alexandrov" and that the appointing authority should not be of the nationality of either of the Parties;

**WHEREAS** by letter dated October 12, 2009, the PCA invited the Claimant to comment on the Respondent's letter by October 19, 2009;

**WHEREAS** by letter dated October 19, 2009, the Claimant stated that under the UNCITRAL Rules "there is no requirement [...] for the party appointed arbitrator [...] to make any written or oral statement in relation to his or her challenge." The Claimant also concurred with the Respondent that the appointing authority should not be of either of the Parties' nationality, but did not respond to the Respondent's comment regarding the appointing authority's duty to give reasons;

**WHEREAS** on October 26, 2009, the Secretary-General of the PCA, having established to his satisfaction his competence to designate an appointing authority, designated Mr. Jernej Sekolec as appointing authority in this matter for all purposes under the UNCITRAL Rules;

**WHEREAS** on October 29, 2009, Mr. Sekolec invited the Parties to make submissions in accordance with the following schedule:

1. By **November 6, 2009**, the Claimant shall submit a response to the Respondent's Challenge together with any supporting documentation ("Claimant's Response").
2. By **November 20, 2009**, the Respondent shall submit any further comments it may have, but only in rebuttal to the Claimant's Response ("Respondent's Rebuttal").
3. By **December 4, 2009**, the Claimant shall submit any further comments it may have, but only in rebuttal to the Respondent's Rebuttal ("Claimant's Reply").
4. By **December 11, 2009**, Mr. Stanimir A. Alexandrov may submit any comments he may have on the Parties' submissions.

**WHEREAS** on November 6, 2009, the Claimant filed its Response to the Respondent's Challenge;

**WHEREAS** by letter dated November 12, 2009, the Respondent advised that it was "available to hold a brief hearing [...] in case you consider that a hearing could be useful in order for each party to develop its position on the grounds for disqualification of Mr. Alexandrov."

**WHEREAS** by letter dated November 16, 2009, Mr. Sekolec informed the Parties that he did not foresee any need for a hearing on the challenge;

**WHEREAS** on November 20, 2009, the Respondent filed its Rebuttal to the Claimant's Response;

**WHEREAS** on December 4, 2009, the Claimant filed its Reply to the Respondent's Rebuttal;

**WHEREAS** the deadline of December 11, 2009 passed without Mr. Stanimir Alexandrov having filed any comments on the challenge;

**NOW THEREFORE** I, Jernej Sekolec, appointing authority in this matter, having considered all of the submissions and supporting documents of the Parties:

**HEREBY SUSTAIN** the challenge against Mr. Alexandrov as arbitrator in the above-referenced matter for the following reasons:

1. In his disclosure, Mr. Alexandrov indicates that he and his law firm currently represent the claimants in the long-running investment treaty proceedings, *Compañía de Aguas del Aconquija S.A. and Vivendi S.A. v. Argentine Republic* (the "Vivendi" case). This puts Mr. Alexandrov in a situation of adversity towards Argentina, a situation that is often a source of justified concerns and that I believe should in principle be avoided, except where circumstances exist that eliminate any justifiable doubts as to the arbitrator's impartiality or independence.
2. It is noted that, in their submissions on the challenge, both Parties have referred to the IBA Guidelines on Conflicts of Interest in International Arbitration (the "IBA Guidelines"). Although the IBA Guidelines have no binding status in the present proceedings, they reflect international best practices and offer examples of situations that may give rise to objectively justifiable doubts as to an arbitrator's impartiality or independence. Specifically, in support of its challenge, the Respondent relied on the scenario set forth at section 3.4.1 of the "Orange List" of the IBA Guidelines which provides that circumstances in which "[t]he arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties" may give rise to justifiable doubts as to the arbitrator's impartiality or independence. I also note that the scenario posited at section 3.1.2 of the "Orange List" provides that circumstances in which "[t]he arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter" may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Given that the facts underlying Mr. Alexandrov's disclosure are reflected in both of these scenarios, I am of the opinion that the conflict in question is sufficiently serious to give rise to objectively justifiable doubts as to Mr. Alexandrov's impartiality and independence.
3. It has been argued in opposition to the challenge, *inter alia*, that the *Vivendi* case may soon come to a close and is unrelated to the present case. However, I do not consider that these circumstances resolve all justifiable doubts. While no more action appears to be required from Mr. Alexandrov in the current annulment proceedings in the above case, I do not consider that this possibility entirely negates Mr. Alexandrov's conflict as envisaged in section 3.4.1 of the IBA Guidelines inasmuch as the possibility exists that the case may continue in some form and engage Mr. Alexandrov's firm's continued representation.

4. As to the relation between the cases, I note again that this is not merely a case in which the arbitrator's law firm is acting adversely to one of the parties in the dispute, but rather a case where the arbitrator has personally and recently acted adversely to one of the parties to the dispute. The scenario set forth in section 3.1.2 of the IBA Guidelines provides that past, personal representation against one of the parties "in an unrelated matter" can be sufficient to give rise to justifiable doubts. Moreover, while the Claimant has argued that the cases are unrelated and there are technical differences between the issues raised in the two cases, they are not entirely dissimilar. Both matters are investment protection actions of considerable magnitude which raise broadly similar concerns against the same State party in a manner that reinforces any justifiable doubts as to the arbitrator's impartiality or independence.
5. I wish to add that I find no reason to doubt Mr. Alexandrov's personal intention to act impartially and independently but that, for the reasons stated above, it is prudent that another arbitrator be appointed by the Claimant.
6. In light of my conclusion above, the further grounds of challenge raised by the Respondent need not be considered.
7. In accordance with Articles 38 and 40 of the UNCITRAL Rules, the power to fix and apportion costs, including the fees and expenses of the appointing authority and other costs associated with a challenge, is reserved to the arbitral tribunal. Therefore, I do not find it appropriate to rule on the Respondent's request for the costs of this challenge.

**ACCORDINGLY**, the Claimant is invited to appoint a substitute arbitrator within 30 days in accordance with Article 12(2) of the UNCITRAL Rules.

Done at Vienna, Austria, on December 17, 2009.



Jernej Sekolec