INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Huawei Technologies Co., Ltd.
Claimant

v.

Kingdom of Sweden
Respondent

(ICSID Case No. ARB/22/2)

PROCEDURAL ORDER No. 4

Members of the Tribunal
Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Jane Willems, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

Assistant to the Tribunal
Mr. Lukas Montoya

Secretary of the Tribunal
Ms. Martina Polasek

21 July 2023

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I. PROCEDURAL BACKGROUND

1. On 14 April 2023, the Respondent alleged that, in its Statement of Claim of 16 January 2023 (the "Memorial"), the Claimant had relied upon but failed to produce contracts with certain Mobile Network Operators ("MNOs") in Sweden, namely Hi3G Access AB ("Hi3G"), Telia Company AB ("Telia"), and Net4Mobility HB ("N4M"). Therefore, the Respondent requested that the Tribunal issue an order directing the Claimant to produce the contracts with these MNOs ("MNO Contracts").

2. On 20 April 2023, the Claimant requested that the Tribunal grant it until 5 May 2023 to reach an agreement with the MNOs in order to produce the MNO Contracts.

3. On 24 April 2023, the Respondent objected to the Claimant's request of 20 April and asked that the Tribunal issue an order directing the Claimant to file the MNO Contracts. On 25 April 2023, the Claimant reiterated its request of 20 April 2023.

4. On 26 April 2023, the Tribunal granted the Claimant's request of 20 April 2023 and allowed the Claimant to reach an agreement with the MNOs concerning the production of the MNO Contracts by 5 May 2023.

5. On 5 May 2023, the Claimant requested an extension of time to produce the contracts with Hi3G and Telia, until 10 and 11 May 2023, respectively. The Claimant also informed the Tribunal that N4M had not consented to any disclosure of its contracts with Huawei. However, given the existence of an exception permitting disclosure in accordance with a judicial order, the Claimant stated that it would have no objection to producing the contracts with N4M if ordered to so by the Tribunal.

6. On 7 May 2023, the Tribunal granted the extensions requested by the Claimant and invited Sweden to comment on the production of the N4M contracts by 10 May 2023.

7. On 10 May 2023, the Claimant produced a Core Frame Agreement (the "Hi3G Core Agreement"),[1] and a Framework Radio Refarming Agreement ("Hi3G Refarming Agreement"),[2] entered into between Huawei Technologies Sweden AB ("Huawei Sweden") and Hi3G (jointly the "Hi3G Contracts"). The Claimant stated that Hi3G had "conditioned its consent, and insisted on, the redaction of certain highly sensitive business information", and that therefore the Hi3G Contracts had been redacted accordingly.

8. On 11 May 2023, the Claimant stated that Telia had conditioned its consent to the production of the Telia contract on the redaction of "highly sensitive business information". It also stated that, upon Telia's insistence, Huawei concluded a non-disclosure agreement ("NDA") with Telia. Moreover, the Claimant indicated that, in accordance with the NDA, it could provide the Telia contract to the Tribunal on an *ex parte* basis, and that the Tribunal could then disclose it to the Respondent, subject to the Tribunal giving certain confidentiality assurances requested by Telia.

9. On 12 May 2023, the Respondent voiced concerns about the number of redactions in the Hi3G Contracts and the Claimant's intention to submit the Telia contract *ex parte* pursuant to an unauthorized NDA. In view of the various exchanges between the Parties regarding

[1] **C-319**, Hi3G Core Agreement, March 2015.

[2] **C-320**, Hi3G Refarming Agreement, June 2017.

the production and redaction of the MNO Contracts, the Respondent requested leave to make a formal application on the matter by 19 May 2023.

10. On 13 May 2023, the Tribunal granted the Respondent's request to make a formal application on the production and redaction of the MNO Contracts.

11. On 14 May 2023, in line with the Claimant's statements in its communication of 5 May 2023,[3] the Tribunal ordered the production of the N4M contracts. It also confirmed that it would receive the Telia contract on an *ex parte* basis and, without reviewing it, would then transmit it to the Respondent while confirming the confidential treatment of said contract.

12. On 15 May 2023, the Claimant produced a Frame Supply Agreement on GSM and LTE (the "N4M GSM/LTE Agreement"),[4] a Support Services Agreement (the "N4M Support Agreement"),[5] and a Frame Supply Agreement (the "N4M Supply Agreement"),[6] all entered into between Huawei Sweden and N4M (jointly the "N4M Contracts"). In doing so the Claimant specified that it had redacted "certain highly sensitive business information" in these contracts.

13. On 17 May 2023, the Claimant produced an Antenna Purchase Sub-Agreement between Huawei International Co. Limited and Telia (the "Telia Sub-Agreement"),[7] with redactions, on an *ex parte* basis. On the same day, the Tribunal transmitted the Telia Sub-Agreement to the Respondent without reviewing it, while confirming its confidential treatment.

14. On 30 May 2023, the Respondent filed its formal "Application to Claimant's Continued Withholding of Central Evidence on which its Case is Premised, and Application Thereon" (the "Application").

15. On 9 June 2023, the Claimant responded to the Respondent's Application (the "Response"). In doing so, *inter alia* it adduced a Master Agreement between Huawei International PTE LTD and Telia (the "Telia Master Agreement",[8] together with the Telia Sub-Agreement the "Telia Contracts"), essentially unredacted, on an *ex parte* basis. On the same day, without reviewing it, the Tribunal transmitted the Telia Master Agreement to the Respondent.

16. On 13 June 2023, the Tribunal invited the Parties to file a second round of submissions concerning matters related to the production and redaction of the MNO Contracts.

17. Accordingly, on 20 June 2023, the Respondent filed a reply to the Claimant's Response (the "Reply") and on 26 June 2023, the Claimant filed a rejoinder to the Respondent's Reply (the "Rejoinder").

18. On 29 June 2023, having considered the Parties' positions, the Tribunal partially granted the Respondent's prayers for relief as set out in the Application and the Reply (the

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[3] *Supra*, ¶ 5.

[4] **C-321**, N4M GSM/LTE Contract, February 2010.

[5] **C-322**, N4M Support Agreement, February 2010.

[6] **C-323**, N4M Supply Agreement, April 2020.

[7] **C-324**, Telia Sub-Agreement, February 2018.

[8] **C-325**, Telia Master Agreement, December 2015.

"Decision"),[9] and informed the Parties that for the sake of procedural efficiency it would provide the reasons for the Decision in due course.

19. On 2 July 2023, pursuant to the Decision, the Claimant produced unredacted versions of the Hi3G Contracts, the N4M Contracts, and a Draft 5G Radio Amendment to the Hi3G Refarming Agreement between Huawei Sweden and Hi3G.[10]

20. On 4 July 2023, the Claimant produced unredacted versions of the Telia Contracts.

21. This Procedural Order sets out the reasons underlying the Decision. The references to the record in the summary of the Parties' submissions and the subsequent analysis aim to reflect the state of the record and the Tribunal's understanding thereof as it existed on 29 June 2023.

II. PRAYERS FOR RELIEF

22. The Respondent requests that:

> a. The Tribunal order Claimant to submit all relevant MNO Contracts—i.e., including all the framework agreements, associated agreements, amendments, annexes, appendices, schedules, purchase orders, and other related documents that comprise the contractual framework with the MNOs—in full and without redaction on the record of this Arbitration and to make such submission immediately;
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> b. In the alternative, in view of Claimant's representation that it is not relying on the framework agreements and need not have submitted them into evidence at all, the Tribunal direct that Claimant withdraw the redacted framework agreements, Exhibits C-319 to C-325, from the record and not be permitted to rely on them;
>
> and, in either event,
>
> c. In view of Claimant's position that, consistent with paragraph 15.2 of Procedural Order No. 1, it has submitted all the evidence on which it relies in support of its claims and is not relying on the MNO Contracts (as that term is used in Sweden's Application and Reply), the Tribunal confirm that Claimant will not later be permitted to remedy any of the deficiencies in its Memorial identified in Sweden's Application and Reply that Claimant has elected not to remedy at this time; and
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> d. Order Claimant to bear Sweden's costs associated with the present application and related work required as a result of Claimant's failure to timely submit the MNO Contracts.[11]

23. The Claimant requests the Tribunal to:

> (i.) deny Sweden's request that Huawei shall submit "all relevant MNO Contracts—i.e., including all the framework agreements, associated agreements, amendments, annexes,

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[9] The Decision is incorporated in Section V *infra*.

[10] **C-328**, Hi3G Draft 5G Amendment to the Hi3G Refarming Agreement, 2020. In the Decision, the Tribunal ordered the production of a June 2020 contract with Hi3G marked in the Memorial as being "awarded but not signed". This was done as June 2020 appeared to be the only time reference in the Memorial allowing to date said unsigned contract (*see* Memorial ¶ 280). In its letter of 2 July 2023, the Claimant now clarifies that the reference to "June 2020" was indicative of Hi3G's decision to award the contract to Huawei Sweden, but was not the date of a specific version of the unsigned contract. The Claimant therefore states that the Draft 5G Amendment is "an advanced draft […] from August 2020". This being so, below the Tribunal now refers to 2020 contract "awarded but not signed" with Hi3G (*infra*, ¶¶ 56-57, 75.i).

[11] Reply, ¶ 71.

appendices, schedules, purchase orders, and other related documents that comprise the contractual framework with the MNOs—in full and without redaction on the record";

(ii.) deny Sweden's alternative request that Huawei "withdraw the redacted framework agreements, Exhibits C-319 to C-325, from the record and not be permitted to rely on them";

(iii.) dismiss Sweden's request for costs; and

(iv.) reserve determining Huawei's costs associated with Sweden's Application.[12]

III. SUMMARY OF THE PARTIES' POSITIONS

24. This section summarizes the Parties' positions. The Tribunal has considered all of the Parties' allegations and arguments, even if specific reference is not made to a given allegation or argument.

A. RESPONDENT'S POSITION

25. The Respondent submits that the MNO Contracts are the "cornerstone" of the Claimant's case.[13] In particular, it points to Section 15.2 of Procedural Order No. 1 ("PO1"), which required the Claimant to set forth in the Memorial all the facts and legal arguments on which it intended to rely, including any evidence in support its case.[14]

26. Against this background, the Respondent argues that, contrary to the Claimant's position,[15] the Application does not involve a premature document production request under Section 16 of PO1.[16] Rather, the Application deals with the Claimant's failure to produce all documents on which it relied in the Memorial, so that, as a matter of procedural fairness and due process, the Respondent can adequately assess the basis of the Claimant's claims and allegations and respond accordingly in the Counter-Memorial.[17] Hence, for Sweden, the Claimant should have produced the unredacted MNO Contracts together with the Memorial.[18]

27. Nevertheless, the Respondent submits that the Claimant has yet to produce the entirety of the documents encompassing the MNO Contracts.[19] The Respondent refers chiefly to allegedly withheld or potentially deleted components, such as amendments, annexes, appendices, schedules, and/or purchase orders.[20] It also notes that, although Appendix 1 to the Memorial mentions a contract "awarded but not signed" with Hi3G, the Claimant has not adduced said contract.[21]

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[12] Response, ¶ 71; Rejoinder, ¶ 56.

[13] Application, ¶ 1. *See also* Application, ¶ 147.

[14] Application, ¶¶ 17, 28, 66.

[15] *Infra*, ¶¶ 32-33.

[16] Application, fn. 81; Reply, ¶¶ 7-9

[17] Application, ¶¶ 67, 84, 88; Reply, ¶¶ 5, 25, 63-64.

[18] Application, ¶¶ 4, 15, 17-21; Reply, ¶¶ 7-8.

[19] Reply, ¶¶ 40-41.

[20] Application, ¶¶ 12, 14, 62-63, 92-93; Application, Annex A; Reply, fn. 27.

[21] Application, fn. 76.

28. Moreover, the Respondent argues that the Claimant has failed to justify the redactions of the MNO Contracts, while stressing that the Claimant should have addressed any confidentiality concerns purportedly calling for the redaction of the MNO Contracts before filing the Memorial.[22] According to the Respondent:

i. The Claimant has arrogated to itself the ability to identify the information requiring redaction, thus preventing the Respondent and the Tribunal from analyzing whether the Claimant's representations on confidentiality are correct.[23] The Claimant attempts to justify its approach by alleging that the redacted information is irrelevant. Yet, relevance is not an appropriate test for the permissibility of redactions.[24]

ii. Tribunals routinely reject bare assertions of confidentiality without substantiation.[25] Instead, when deciding on the exclusion of evidence, they weigh the interests of the party seeking disclosure (especially in terms of due process)[26] against those of the party withholding information.[27] In this case, the redacted portions of the documents which the Claimant characterizes as irrelevant may be of interest to Sweden.[28] In turn, the Claimant does not explain why less restrictive measures to protect allegedly confidential information are inadequate, especially in view of the confidentiality regime contained in Procedural Order No. 2 ("PO2").[29]

iii. The existence of confidentiality provisions in the MNO Contracts is insufficient to preclude the production of the entirety of these documents.[30] In any event, the confidentiality provisions of the MNO Contracts (a) allow the disclosure of confidential information in compliance with a judicial order, namely, an order by the Tribunal; and (b) in the event of such order do not require the consent of the respective MNO.[31]

iv. The Claimant has not shown "compelling" grounds for the redactions at issue under Article 9(2)(e) of the IBA Rules on the Taking of Evidence in International Arbitration ("IBA Rules").[32] Specifically, the Claimant has not established (a) that Sweden is a competitor to Huawei or the MNOs; [33] and (b) that there is a risk that Sweden may otherwise disclose the unredacted MNO Contracts outside this arbitration.[34]

29. Alternatively, the Respondent contends that "in view of Claimant's representation that it is not relying on the [MNO Contracts] and need not have submitted them into evidence at all, [the] Claimant [must be directed] to withdraw the redacted [MNO Contracts] from the

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[22] Application, ¶¶ 9-11, 80.

[23] Application, ¶¶ 3, 94-96; Reply, ¶¶ 22, 28.

[24] Reply, ¶ 28.

[25] Application, ¶ 72.

[26] Application, ¶ 77.

[27] Application, ¶¶ 74-75.

[28] Reply, ¶ 29.

[29] Application, ¶¶ 73, 102, 137, 152-153; Reply, ¶¶ 25-26.

[30] Application, ¶ 76; Reply, ¶¶ 20-21.

[31] Application, ¶¶ 104, 106-111, 112-117; Reply, ¶¶ 12-18, 21.

[32] Application, ¶¶ 68 ss, 92-102, 136 ss.

[33] Application, ¶¶136, 138-142; Reply, ¶¶ 31-33.

[34] Reply, ¶¶ 34 ss.

record",[35] and in any event should be "precluded from submitting any further MNO Contracts later in these proceedings".[36]

B. CLAIMANT'S POSITION

30. The Claimant submits that its reliance on the MNO Contracts in the Memorial is limited to establishing the "fact"[37] of their "existence".[38] According to the Claimant, the existence of the MNO Contracts and the contractual rights arising therefrom were "independently evidenced in the Memorial, either through documentary evidence, witness evidence, or a combination of the two".[39] Moreover, the Claimant contends that Sweden has never contested the existence of the MNO Contracts.[40] The Claimant therefore posits that the Memorial complies with Section 15.2 of PO1, as it included all the evidence on which the Claimant and its experts rely.[41] For the Claimant, it "did not need to enter the MNO Contracts into evidence at all".[42]

31. The Claimant further submits that, exceeding its obligations and acting in good faith, it nevertheless sought to satisfy the Respondent's original request of 14 April 2023 for the production of the MNO Contracts.[43] Notwithstanding the fact that it produced the relevant MNO Contracts by 17 May 2023, in its Application the Respondent considerably broadened the scope of the original request.[44]

32. Against this background, the Claimant argues that the Application is but a vehicle for the Respondent to (i) secure an extension to submit its Counter-Memorial, thereby impermissibly delaying the proceedings;[45] and (ii) engage in a fishing expedition through a US-style pre-trial discovery, thereby circumventing the dedicated document production phase scheduled after the filing of the Counter-Memorial.[46]

33. In this latter respect, the Claimant contends that Sweden remains free to argue in its Counter-Memorial that the Claimant has not met its evidentiary burden regarding the MNO Contracts, and to request the production of further documents during the document production phase.[47] Such a request, the Claimant stresses, would need to meet the relevant specificity and materiality standards, as opposed to the Application's broad request for the "contractual framework" comprising the MNO Contracts.[48]

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[35] Reply, ¶ 6.

[36] Reply, ¶ 64. *See also* Reply, ¶ 71(b)-(c), referring to Response, ¶¶ 20, 4, 15–41, 63.

[37] Response, ¶ 18.

[38] Rejoinder, ¶ 14.

[39] Response, ¶¶ 19-20. See also Response, ¶¶ 22-23; Rejoinder, ¶¶ 14-15.

[40] Response, ¶ 20.

[41] Response, ¶¶ 15-17, 28-31; Rejoinder, ¶¶ 15, 23, 25, 29.

[42] Response, ¶ 20.

[43] Response, ¶¶ 9-10, 14, 20, 67-70; Rejoinder, ¶¶ 17, 26; *supra*, ¶ 1.

[44] Response, ¶¶ 1-2; Rejoinder, ¶¶ 4, 5. See also Response, ¶¶ 21, 37.

[45] Response, ¶¶ 11-12; Rejoinder, ¶ 2.

[46] Response, ¶¶ 5, 8, 26; Rejoinder, ¶¶ 5, 28, 30.

[47] Response, ¶¶ 4-5, 26, 39; Rejoinder, ¶ 5, 21, 30.

[48] Response, ¶¶ 5-7; Rejoinder, ¶¶ 18-19, 21.

34. As to the specific redactions of the MNO Contracts, the Claimant asserts that they are necessary notwithstanding the confidentiality regime set up by virtue of PO2.[49] In particular, the Claimant submits the following arguments:

i. Confidentiality and the need for redaction in principle must be assessed unilaterally (i.e., based on the representations of the party asserting confidentiality),[50] and the Respondent has presented no evidence that the redactions are abusive. To the contrary, in Annex A to the Response, the Claimant justified its redactions in detail.[51] This annex explains why the redacted information is irrelevant to evaluate the scope, nature, and significance of the MNO Contracts, meaning that Sweden possesses all the information necessary to answer Huawei's claims.[52] Still, the Reply does not engage with said Annex A.[53]

ii. Unlike the Telia Master Agreement,[54] the Hi3G and N4M Contracts contain an exception allowing for the disclosure of confidential information to comply with a judicial order.[55] However, the exceptions to confidentiality provided in the MNO Contracts do not entail an "obligation or requirement for either [contract] party to produce the contracts in fully unredacted versions".[56] Moreover, and contrary to the Respondent's argument, the generic language in Section 15.2 of PO1 does not constitute a "judicial order" for the purpose of the confidentiality provisions in the MNO Contracts.[57] Hence, the Claimant was under no obligation to submit the unredacted MNO Contracts with the Memorial.[58]

iii. There are additional "compelling" reasons to accept the redactions.[59] Notably (a) that Sweden is a competitor to Hi3G and N4M;[60] and (b) that there is a serious risk that the Respondent will disclose the unredacted MNO Contracts outside this arbitration.[61]

35. Lastly, the Claimant contends that the Respondent has provided no "foundation" for its alternative request to have the redacted MNO Contracts withdrawn from the record.[62]

IV. ANALYSIS

36. The Parties' dispute regarding the MNO Contracts revolves around three main points:

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[49] Rejoinder, ¶ 51.

[50] Response, ¶ 46; Rejoinder, ¶ 49.

[51] Rejoinder, ¶ 42.

[52] Response, ¶¶ 25, 50; Rejoinder, ¶¶ 47-49, 51, fn. 75.

[53] Rejoinder, ¶¶ 8, 42, 48.

[54] Rejoinder, ¶ 43.

[55] Rejoinder, ¶ 43.

[56] Response, ¶ 52.

[57] Rejoinder, ¶ 45.

[58] Rejoinder, ¶ 45.

[59] Response, ¶¶ 49-59; Rejoinder, ¶¶ 52 ss.

[60] Response, ¶¶ 57-58; Rejoinder, ¶ 53.

[61] Response, ¶ 56; Rejoinder, ¶ 54.

[62] Rejoinder, ¶ 36. *See also* Rejoinder, ¶ 37.

i. Whether and to what extent the Claimant should have produced the MNO Contracts and their components along with the Memorial, and/or should now be ordered to produce them, if any are still missing, as opposed to such production being a matter for the document production phase **(A)**.

ii. Whether and to what extent the redactions of the MNO Contracts must be maintained **(B)**.

iii. Whether the Respondent's alternative and secondary requests seeking that the redacted MNO Contracts be withdrawn from the record, and/or that the Claimant be restrained from remedying any evidentiary deficiencies regarding the MNO Contracts are well founded **(C)**.

A. PRODUCTION OF THE MNO CONTRACTS AND THEIR COMPONENTS

37. It is undisputed that the Claimant did not produce the MNO Contracts with its Memorial of 16 January 2023. The Claimant produced the redacted Hi3G Contracts on 10 May 2023.[63] It then produced the redacted N4M Contracts on 15 May 2023.[64] Lastly, it produced the redacted Telia Sub-Agreement on 17 May 2023,[65] and the essentially unredacted Telia Master Agreement on 9 June 2023.[66]

38. This being so, the Claimant relies on the MNO Contracts in the Memorial for purposes of making its case on jurisdiction, liability, and damages. For instance:

i. On jurisdiction, the Claimant relies on the MNO Contracts to argue that it holds a protected investment in Sweden under Article 1(1) of the Sweden-China BIT in the form of "contractual rights" and an "entitlement to performance having an economic value".[67] The Claimant also relies *inter alia* on the MNO Contracts to argue that its investment in Sweden satisfies the requirements of Article 25 of the ICSID Convention.[68]

ii. On liability, the Claimant relies on the MNO Contracts to argue that Sweden's challenged measures resulted in the expropriation of its investment. According to the Claimant, "Sweden's actions directly and permanent drove Huawei out, not only of the 5G telecommunications market in Sweden, but of the carrier network market as a whole, as the MNOs were effectively prevented from retaining Huawei for its commercial network products and services".[69] In this context, the Claimant stresses that, "in circumstances where the [MNO Contracts] are not band specific, the measures taken by Sweden are not limited to the 2.3 and 3.5 GHz bands".[70]

iii. On damages, the Claimant argues that "Huawei Sweden had at least six active contracts with Swedish MNOs that were impacted by [Sweden's challenged measures]".[71] In its

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[63] *Supra*, ¶7.

[64] *Supra*, ¶ 12.

[65] *Supra*, ¶ 13.

[66] *Supra*, ¶ 15.

[67] *See* Memorial, ¶ 426

[68] *See* Memorial, ¶¶ 431, 434, 437.

[69] Memorial, ¶ 507.

[70] Memorial, ¶ 507. *See also* Memorial, ¶ 267.

[71] Memorial, ¶ 564.

> report adduced with the Memorial, Dr. Dippon, the Claimant's quantum expert, affirms that the MNO Contracts were "the foundation of the business relationships Huawei had with the MNOs";[72] "encompassed all [lines]" of Huawei's carrier network business in Sweden;[73] and that the impact by Sweden's measures on the MNO Contracts "deprived Huawei of US$ 561.94 million".[74]

39. On this basis, it seems clear that the Claimant's reliance on the MNO Contracts is not limited to the mere "fact" of their "existence".[75] The scope, nature, significance, and performance of the MNO Contracts are also at issue. The Claimant made this clear in its submission on bifurcation,[76] which the Tribunal noted in Procedural Order No. 3 ("PO3").[77]

40. Accordingly, for present purposes, it is immaterial whether or not the Memorial was accompanied by evidence other than the MNO Contracts and by witness statements that allegedly prove the existence of the MNO Contracts, as the Claimant argues.[78] It remains that the Claimant's reliance on the MNO Contracts in the Memorial extends to the content of these agreements. That content can only be satisfactorily ascertained through the MNO Contracts themselves, which the Claimant did not provide with the Memorial.

41. As a result, the rules applicable to the production of the MNO Contracts are not found in Section 16 of PO1, dealing with the document production phase following the first round of submissions. With one exception specified below,[79] the relevant rules are contained in Section 15.2 of PO1, which reads as follows:

> In the first exchange of submissions on a given matter (in principle, the Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments on which they intend to rely, including any evidence in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified, and comprehensive manner.

42. Section 15.2 of PO1 plays an important role from the standpoint of both due process and the orderly conduct of the proceedings. It aims at ensuring that, from the outset, each Party sets out its case in a comprehensive matter in order to allow the opposing Party to scrutinize and test its opponent's factual allegations and legal arguments. It also seeks to minimize the risk that new material issues arise during the Parties' second exchange of submissions, which may create undesirable surprises and disrupt the smooth conduct of the arbitration.

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[72] Dippon ER, ¶ 69.

[73] Dippon ER, ¶ 12.

[74] Dippon ER, ¶ 24.

[75] *Supra*, ¶ 30.

[76] *See* Claimant's Response on Bifurcation, 27 February 2023, ¶¶ 44 ("Sweden's actions, taken in contravention of its international obligations under the Treaty, have **prevented Huawei Sweden from performing [the MNO Contracts]**), 48 ([T]he allegation that Huawei Sweden did not have the right to provide equipment to Sweden's 5G networks will necessarily require an examination of at least the following facts and evidence in order to be properly adjudicated: […] An appreciation of the **nature** and **scope** of the rights resulting from [the MNO Contracts].") (emphasis added).

[77] PO3, ¶ 48 ("As the Claimant argues, the assessment of the second objection potentially requires an analysis of *inter alia* […] the **scope**, **nature**, and **significance** of the purported rights resulting from Huawei Sweden's alleged contracts with MNOs in Sweden") (emphasis added).

[78] *Supra*, ¶ 30.

[79] *Infra*, ¶ 54.

43. Therefore, by not submitting the MNO Contracts with the Memorial, the Tribunal finds that the Claimant failed to comply with the requirements of Section 15.2 of PO1. This remains the case notwithstanding the fact that the MNO Contracts contain confidentiality provisions which are addressed below.[80] These confidentiality provisions required the Claimant either to obtain the consent of the MNOs or an order from the Tribunal to permit it to produce the MNO Contracts with the Memorial.[81] However, between the issuance of PO1 on 27 July 2022 and the filing of the Memorial on 16 January 2023, the Claimant had ample time to attempt to obtain the MNOs' consent.[82] Yet, the Claimant does not appear to have made such an attempt until *after* the filing of the Memorial. In the Memorial, the Claimant simply stated that it "would be willing to seek [MNOs'] consent to the disclosure of [the MNO Contracts]".[83] Rather than raising this issue with the MNOs or, in case of difficulties, with the Tribunal in advance of the Memorial, the Claimant merely made the statement just quoted in a footnote (725) in an appendix (Appendix 1) to the Memorial.

44. It is true that even if the Claimant had sought the MNOs' consent before filing the Memorial, it may have ended up only producing redacted versions. The MNOs might have conditioned their consent to the redaction of their respective contracts (as reportedly Hi3H and Telia did).[84] Be that as it may, nothing prevented the Claimant from seeking the Tribunal's assistance to ensure the timely production of potentially unredacted MNO Contracts. The mention in a footnote of the Claimant's "willingness to be guided by the Tribunal as to the manner in which [the MNO Contracts] could be disclosed"[85] cannot be regarded as a proper request for assistance.

45. Against this background, the Tribunal recalls that the Respondent requests the production of "all the framework agreements, associated agreements, amendments, annexes, appendices, schedules, purchase orders, and other related documents that comprise the contractual framework with the MNOs […]".[86] The Tribunal understands that the Claimant completed its production of the "framework" MNO Contracts on 9 June 2023, when it provided the Telia Master Agreement.[87] It also notes that the Respondent has not identified any other "associated agreement" that the Claimant has not already produced albeit redacted. Accordingly, the Tribunal can dispense with analyzing this part of the Respondent's prayer for relief.

46. The Tribunal thus turns to the Respondent's requests for the production of the MNO Contracts' amendments, annexes, appendices, and schedules (the "Components") **(1)**; the MNO Contracts' purchase orders **(2)**; and the other related documents that comprise the contractual framework with the MNOs **(3)**. In light of the object and purpose of Section 15.2 of PO1 as set out above,[88] the Tribunal will order the production of any missing components of the MNO Contracts if it finds that they are *prima facie* necessary for the

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[80] *Infra*, ¶ 64 ss.

[81] *Infra*, ¶ 65.

[82] As the Claimant did further to the Respondent's initial request for production of 14 April 2023 (*supra*, ¶¶ 1-2).

[83] Memorial, Appendix 1, fn. 725.

[84] *Supra*, ¶¶ 7-8.

[85] Memorial, Appendix 1, fn. 725.

[86] Reply, ¶ 71; *supra*, ¶ 22.

[87] *Supra*, ¶¶ 15, 37.

[88] *Supra*, ¶ 42.

Respondent to test and possibly rebut in the Counter-Memorial the Claimant's invocation of the MNO Contracts in the Memorial.

1. Components

47. It is undisputed that the Claimant has not produced all the Components pertaining to the MNO Contracts. In some cases, the Claimant has confirmed that Components that the Respondent identified as missing "could not be found despite a thorough search".[89] In other cases, the Respondent noted that some Components were marked as "intentionally deleted" and the Claimant has confirmed that such markings "formed part of the original contract".[90] The Tribunal has no reason to doubt the Claimant's representations and will therefore make no order in respect of these Components.

48. Yet in other cases, the Respondent identified Components as missing, which the Claimant labelled as "irrelevant" to assess the value of the corresponding MNO Contract.[91] Similarly, as is the case with the missing Appendices 1-8 to the Telia Master Agreement,[92] the Claimant argued that it did not refer to the Telia Master Agreement in the Memorial.[93]

49. The Tribunal cannot accept the explanations for withholding the production of the Components. First, the Claimant relies on the MNO Contracts to substantiate its case on jurisdiction and liability, in addition to damages.[94] Hence, the alleged lack of relevance of the missing Components to the value of the MNO Contracts cannot be dispositive.

50. Second, as indicated earlier, the Claimant's understanding of what may or may not be relevant should not preclude the Respondent from scrutinizing the text of a contract invoked by its opponent.[95] While a given provision of the MNO Contracts may indicate that the Claimant held a purportedly unfettered right supporting its case, the Respondent is entitled to examine whether other provisions may restrict that right. This applies also to provisions contained in the Components that the Claimant currently withholds.

51. Third, while it is true that the Memorial does not mention the Telia Master Agreement, it does refer to the Telia Sub-Agreement,[96] which incorporates by reference the Master Agreement,[97] and of which Appendices 1-8 form an integral part.[98]

52. In short, all the Components appear *prima facie* necessary for the Respondent to test the Claimant's reliance on the MNO Contracts. In conclusion, subject to the matters addressed

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[89] *See e.g.*, Response, Annex A, pp. 11 (of PDF, referring to "Amendment No. 2" to the Hi3G Core Agreement), 34 (of PDF, referring to "Amendment No. 1" to the N4M Support Agreement).

[90] *See e.g.*, Response, Annex A, pp. 27 (of PDF, referring inter alia to Annex D of "Amendment No. 2" to the N4M GSM/LTE Contract), 46 (of PDF, referring to Annexes 9 and 11 of the Telia Sub-Agreement).

[91] *See e.g.*, Response, Annex A, p. 8 (of PDF, referring to the schedules to an associated Hi3G "Frame Agreement for the Supply of Network Equipment and Services").

[92] Reply, fn. 27.

[93] Rejoinder, fn. 69.

[94] *Supra*, ¶ 38.

[95] *Supra*, ¶¶ 39-42.

[96] *See* Memorial, Appendix 1.

[97] **C-324**, Telia Sub-Agreement, February 2018, Article 3, p. 6 (of PDF).

[98] **C-325**, Telia Master Agreement, December 2015, p. 5 (of PDF).

in paragraph 47 above,[99] the Tribunal will order the production of all the amendments, annexes, appendices, and/or schedules of the MNO Contracts, including Appendices 1-8 to the Telia Master Agreement.

2. Purchase orders

53. It is undisputed that the Claimant has not produced the purchase orders associated with the MNO Contracts although it mentions the purchase orders in the Memorial.[100] However, the Claimant has satisfactorily explained that it does not rely on the purchase orders *per se*.[101] While Dr. Dippon's damages model does refer to the purchase orders under the MNO Contracts, the calculations underlying such references are premised on Huawei's own assessment of the value of the MNO Contracts (provided to the Respondent as Exhibit CMD-015).[102] The Memorial refers back to Dr. Dippon's damages model.[103]

54. Consequently, the Tribunal will not order the production of the purchase orders at this time. This determination does not prevent the Parties from addressing the purchase orders during the document production phase in accordance with Section 16 of PO1.

3. Other related documents and contractual framework

55. The Respondent requests the production of "other related documents that comprise the contractual framework with the MNOs".[104] However, the Respondent has provided no indication that, apart from the MNO Contracts and Components, the Claimant relies on unqualified "related documents" or a broader "contractual framework with the MNOs", but for one exception: an "allegedly 'awarded but not signed' agreement with Hi3G".[105]

56. Indeed, the Claimant alleges that 2020 Hi3G notified Huawei Sweden that "it had won the contract to supply Hi3G's 5G RAN equipment".[106] According to the Claimant, said "contract was in addition to the existing contract[s]" with Hi3G (i.e., the Hi3G Core Agreement and the Hi3G Reframing Agreement),[107] and "added to Huawei's confidence and expectation that it would play an important role in the forthcoming 5G roll out in Sweden".[108] Dr. Dippon's damages model also refers to a "2020" contract "[a]warded but

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[99] *Supra*, ¶ 47.

[100] *See e.g.*, Memorial, ¶¶ 280 ("The complete destruction of Huawei's carrier network business in Sweden is further evidenced by the lack of **Purchase Orders** […] issued under existing framework agreements entered into between Huawei Sweden and the Swedish MNOs either before or shortly after the PTS Decision"), 508 ("The decision to exclude Huawei from the 2.3 and 3.5 GHz bands thus deals a death knell to every aspect of Huawei's carrier network business in Sweden. Huawei expects that the revenue derived from its CNBG in Sweden will be effectively wiped out by 2025. In the wake of the PTS Decision, Huawei Sweden has received very few **purchase orders** under existing contracts (and no new tender invitations), and what little business remains is expected to taper off drastically in the coming years") (emphasis added).

[101] *See* Response, ¶ 38.

[102] *See* "Table 3" at Dippon ER, ¶ 67 (citing as a source "Exhibit CMD-015", titled "Huawei, 'Summary of key frame contracts impacted by PTS decision.xlsx'").

[103] *See* Memorial, fn. 348, referring to Dippon ER, ¶ 67.

[104] Reply, ¶ 71; *supra*, ¶ 22.

[105] Application, fn. 76.

[106] Memorial, ¶ 197.

[107] Memorial, ¶ 197.

[108] Memorial, ¶ 199.

not signed" with Hi3G.[109] Appendix 1 to the Memorial similarly lists a contract "[a]warded but not signed" with Hi3G among "Huawei Sweden's confidential Contracts with network operators referred to in Huawei's Statement of Claim and the Expert Report of Dr Christian Dippon".[110]

57. Yet, the Claimant has not produced the 2020 contract at issue. In the Tribunal's view, said contract is *prima facie* necessary at a minimum for the Respondent to test the Claimant's alleged expectations regarding the participation of Huawei Sweden in Sweden's 5G roll out. Therefore, it will order its production.

58. This being so, the Tribunal will not order the production of unqualified "related documents" or the broader "contractual framework with the MNOs", as the Respondent has not established the Claimant's reliance on these categories of information.

B. APPROPRIATENESS OF THE REDACTIONS

59. The Claimant has redacted the MNO Contracts (and Components) produced at varying degrees. By the Tribunal's estimates, the Claimant has redacted approximately 70% of the Hi3G and N4M Contracts. In turn, it has redacted only 5% of the Telia Sub-Agreement, and has essentially left the Telia Master Agreement unredacted save for distinct and minor passages allegedly referring to business/registration addresses and personal information.

60. As a threshold matter, the Tribunal notes that in multiple instances the Claimant argues that the redacted portions of the MNO Contracts (and Components) are "irrelevant" to assess "the scope, nature and significance" of the MNO Contracts.[111] For the reasons set out above in the context of the production of the Components,[112] which apply here *mutatis mutandis*, the Tribunal cannot accept the Claimant's relevance argument as a valid ground for redaction. There is, however, one exception to the Tribunal's non-acceptance: the redaction of personal information of individuals, that is, natural persons. The Respondent has not established why accessing that information is *prima facie* necessary for it to test the Claimant's reliance on the MNO Contracts. Moreover, subject to particular circumstances that are not made out here, personal information of natural persons would appear to deserve protection. Accordingly, the Tribunal will allow that information to remain redacted for the time being.

61. The Tribunal now turns to the bulk of the redactions. According to the Claimant, these redactions seek to protect allegedly "highly sensitive business information", such as price calculations, confidential business records or models, technical formulas, agreements with suppliers and customers, trade secrets, proprietary information, or other forms of know-how.[113] More specifically, the Claimant has advanced the following explanations:

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[109] Dippon ER, ¶ 67; Memorial, ¶ 280.

[110] Memorial, Appendix 1.

[111] Response, Annex A, p. 2 (of PDF, referring to the Hi3G Core Agreement). *See also e.g.,* Response, Annex A, pp. 9 (of PDF, referring to "Amendment No. 1" to the Hi3G Core Agreement), 11 (of PDF, referring to "Amendment No. 3"to to the Hi3G Core Agreement), 12 (of PDF, referring to the Hi3G Reframing Agreement), 16 (of PDF, referring to the schedules of an associated Hi3G "IP Network Agreement"), 21-22 (of PDF, referring to the N4M GSM/LTE Contract), 24 (of PDF, referring to annexes to "Revision B" of the N4M GSM/LTE Contract), 32-33 (of PDF, referring to the N4M Support Agreement), 42 (of PDF, referring to several Annexes to the N4M Supply Agreement), and 46 (of PDF, referring to annexes to the Telia Sub-Agreement).

[112] *Supra*, ¶ 50.

[113] *See* Response, ¶¶ 47, 51.

i. Hi3G had "conditioned its consent to and insisted on the redaction of certain highly sensitive business information" in the Hi3G Contracts.[114] When the Claimant produced the Hi3G Contracts, it clarified that the redactions therein "reflect the contractual parties' agreement in this regard".[115]

ii. It would be willing to produce the N4M Contracts "if ordered to do so by the Tribunal […], subject to the redaction of highly sensitive business information".[116] When the Claimant produced the N4M Contracts, it confirmed that "certain highly business information [had] been redacted".[117]

iii. Telia had "expressed concerns about the confidentiality of highly sensitive business information and had conditioned its consent" to the production of the Telia Sub-Agreement "on the redaction of highly sensitive business information".[118]

62. As previously noted, information that was redacted should thus be disclosed if it is *prima facie* necessary for the Respondent to test and possibly counter the Claimant's reliance on the MNOs.[119] Information that may relate to sensitive business data may still be needed to permit an assessment of the Claimant's case. The considerations here are by and large identical to those applied earlier to allegedly irrelevant information. Hence, it appears justified to order the disclosure of that information, or in other words to order the production of unredacted versions of the contracts at issue. The foregoing notwithstanding, the Tribunal may decide to maintain the redactions or otherwise adopt appropriate confidentiality measures to safeguard the currently redacted information, if required to do so by law, by contractual disposition, and/or pursuant to "compelling" grounds in accordance with Articles 9(2)(e) and 9(5) of the IBA Rules.[120]

63. The Claimant does not invoke any applicable legal norms mandating the redaction of the sensitive business information that it has redacted from the MNO Contracts. Thus, no exception to disclosure by operation of law is established. By contrast, the Parties dispute whether the MNO Contracts' confidentiality provisions bar the disclosure of the redacted information **(1)**;[121] and whether other "compelling" reasons justify keeping the redactions **(2)**.[122]

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[114] Claimant's communication of 5 May 2023, p. 1.

[115] Claimant's communication of 10 May 2023.

[116] Claimant's communication of 5 May 2023, p. 2.

[117] Claimant's communication of 5 May 2023, p. 2.

[118] Claimant's communication of 11 May 2023, p. 1.

[119] *Supra*, ¶ 60.

[120] IBA Rules, Articles 9(2)(e) ("The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral 23 testimony or inspection, in whole or in part, [pursuant to] grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling."), 9(5)(" The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit Documents to be produced, and evidence to be presented or considered subject to suitable confidentiality protection."). *See also* PO1, § 16.1 ("The Tribunal and the Parties shall be guided by the 2020 IBA Rules on the Taking of Evidence in International Arbitration").

[121] *Supra*, ¶¶ 28.iii, 34.ii.

[122] *Supra*, ¶¶ 28.iv, 34.iii.

1. Confidentiality clauses in the MNO Contracts

64. Preliminarily, the Tribunal notes that the MNO Contracts do not define the notion of "highly sensitive business information". Rather, they broadly define the term "Confidential Information".[123] For instance:

i. The Hi3G Core Agreement defines as "Confidential Information" any information that either contractual party "has marked as proprietary or confidential" or that a reasonable person would consider confidential "due to its character or nature".[124] The definition covers but is not limited to a contractual party's "business, affairs, products or services[,] know-how and trade secrets".[125]

ii. The N4M GSM/LTE Contract defines as "Confidential Information" *inter alia* "designs, plans, samples, equipment, reports, subscriber lists, pricing information, performance reports, studies, drawings, schedules, specifications, technical data, [and] databases".[126]

iii. The Telia Master Agreement defines as "Confidential Information" any "information of whatever nature whether oral, written, or in electronic or any other form related *inter alia* to a [contractual party's] business, technology, partners, affiliates, customers and/or suppliers".[127]

65. Accordingly, the term "Confidential Information" as it is used in the MNO Contracts appears interchangeable with the notion of "highly sensitive business information" that the Claimant invokes to justify its redactions. In other words, the confidentiality of the contracts' content is imposed by the MNO Contracts themselves. That being said, the MNO Contracts also specify exceptions to their confidentiality regime (i.e., the circumstances in which a contractual party is entitled to disclose Confidential Information). One of these exceptions is compliance with an order by the Tribunal:

i. The Hi3G and the N4M Contracts allow for the disclosure of Confidential Information pursuant to the "order of a judicial body"[128] or a "judicial […] order".[129] It is common ground between the Parties that this language includes orders by the Tribunal.[130]

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[123] *See* **C-319**, Hi3G Core Agreement, March 2015, p. 624 (of PDF); **C-320**, Hi3G Reframing Agreement, June 2017, p. 266 (of PDF); **C-321**, N4M GSM/LTE Contract, February 2010, pp. 51-52 (of PDF); **C-322**, N4M Support Agreement, February 2010, pp. 17-18 (of PDF); **C-323**, N4M Supply Agreement, April 2020, p. 49 (of PDF); **C-325**, Telia Master Agreement, December 2015, p. 55-56 (of PDF).

[124] **C-319**, Hi3G Core Agreement, March 2015, p. 624 (of PDF).

[125] **C-319**, Hi3G Core Agreement, March 2015, p. 624 (of PDF). *See also* **C-320**, Hi3G Reframing Agreement, June 2017, p. 266 (of PDF).

[126] **C-321**, N4M GSM/LTE Contract, February 2010, pp. 51-52 (of PDF). *See also* **C-322**, N4M Support Agreement, February 2010, pp. 17-18 (of PDF); **C-323**, N4M Supply Agreement, April 2020, p. 49 (of PDF).

[127] **C-325**, Telia Master Agreement, December 2015, pp. 55-56 (of PDF).

[128] **C-319**, Hi3G Core Agreement, March 2015, p. 23 (of PDF). **C-320**, Hi3G Reframing Agreement, June 2017, p. 303 (of PDF).

[129] **C-321**, N4M GSM/LTE Contract, February 2010, p. 1164 (of PDF); **C-322**, N4M Support Agreement, February 2010, pp. 78, 183 (of PDF); **C-323**, N4M Supply Agreement, April 2020, p. 43 (of PDF).

[130] Application, ¶¶ 107, 109, 112, 113; Rejoinder, ¶ 43.

ii. The Telia Sub-Agreement contains no provisions on confidentiality. However, as seen above,[131] the Sub-Agreement incorporates by reference the Telia Master Agreement.[132] The latter deals with exceptions to confidentiality in Article 32,[133] which provides that a contract party may disclose Confidential Information if "required to do so […] by executable order of a court […] of competent jurisdiction".[134] In the Tribunal's view, this language is materially equivalent to the language in the Hi3G and the N4M Contracts. It thus considers that the Telia Contracts also allow for the disclosure of Confidential Information pursuant to an order by the Tribunal.[135]

66. Moreover, the MNO Contracts do not entitle the MNOs a right to veto or resist an order by the Tribunal requiring the disclosure of Confidential Information, or to dictate the terms of the disclosure. The Hi3G Contracts do not seem to contain any provision to that effect. The N4M Contracts only state that the disclosing contract party must give "reasonable prior notice" of the ordered disclosure to the other party.[136] As for the Telia Contracts, they provide that "[i]f legally possible and applicable, the recipient of [the order to disclose] shall notify the other [contract party] to allow a reasonable opportunity to seek [a] protective order or equivalent or to appeal".[137] Accordingly, the decision whether and to what extent the Telia Contracts can be produced unredacted lies with the Tribunal, not Telia.

67. Therefore, the Tribunal finds no obstacle in the provisions of the MNO Contracts to order the production of their content (including the Components) unredacted.

2. Other "compelling" grounds

68. With reference to Article 9(2)(e) of the IBA Rules, the Claimant submits that there are "compelling" grounds to maintain the redactions of the MNO Contracts. In particular, the Claimant contends that, should the MNO Contracts (and Components) be produced unredacted, the Respondent could disclose the "highly sensitive business information" contained therein to Telia, given that Sweden is an important shareholder of Telia, thereby placing the information in the hands of a major market competitor to Hi3G and N4M. The Claimant further asserts that Sweden could disclose the confidential information to other market participants, as it did by disseminating the Request for Arbitration ("RfA").[138]

69. Regarding the latter point, there is no indication in the record that the Respondent "leaked" the RfA, as the Claimant argues,[139] nor that there is a risk that other information (including the unredacted MNO Contracts) may be disclosed to the public. It is undisputed that SVT, a Swedish State-owned broadcasting company, had access to the RfA shortly after it was

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[131] *Supra*, ¶ 51.

[132] **C-324**, Telia Sub-Agreement, February 2018, Article 3, p. 6 (of PDF).

[133] **C-325**, Telia Master Agreement, December 2015, pp. 55-56 (of PDF).

[134] **C-325**, Telia Master Agreement, December 2015, p. 56 (of PDF).

[135] The Claimant submits that the Telia Master Agreement does not "permi[t] the disclosure of confidential information pursuant to a judicial order" (Response, fn. 28). It insists that Article 32 of the Master Agreement "makes clear [that the Telia Contracts] do not allow the disclosure of Confidential Information pursuant to an order from an arbitral tribunal" (Response, fn. 76). However, the Claimant does not offer reasons behind these clear-cut statements.

[136] **C-321**, N4M GSM/LTE Contract, February 2010, p. 1164 (of PDF); **C-322**, N4M Support Agreement, February 2010, pp. 78, 183 (of PDF); **C-323**, N4M Supply Agreement, April 2020, p. 43 (of PDF).

[137] **C-325**, Telia Master Agreement, December 2015, p. 56.

[138] Response, ¶¶ 55-59; Rejoinder, ¶ 53-54.

[139] Response, ¶¶ 56, 59; Rejoinder, ¶ 54.

filed in January 2022. However, the Respondent suggests that the access may have been due to an SVT journalist obtaining the RfA though the Swedish Freedom of Press Act ("FPA").[140] In this respect, the Tribunal notes that the FPA was amended in April 2022 to entrust Sweden's Chancellor of Justice (i.e., the Respondent's representative in these proceedings) with the authority to decline the public release of documents relating to treaty-based arbitrations.[141] In any event, since 26 September 2022, after SVT's access to the RfA, this arbitration is governed by the confidentiality/transparency regime instituted through PO2. Sweden has given no reason for the Tribunal to doubt that it will comply with this regime.

70. With respect to the risk that the Respondent might provide the sensitive business information found in the MNO Contracts to Telia, which is unquestionably a major competitor to Hi3G and N4M, the Tribunal appreciates that Sweden holds 39.5% of Telia's share capital.[142] It also appreciates that the members of Telia's Nomination Committee (which is responsible *inter alia* for nominating members of the Board of Directors, including the Chair, as well as the auditors) are appointed based on Telia's ownership structure, and that a government official presides over the Committee.[143]

71. Neither of these two facts turn Sweden into a "competitor to Huawei's customers (i.e., Hi3G and N4M)".[144] Yet, the Tribunal admits that, as a result of Sweden's close relationship with Telia, information produced in this arbitration may end up in Telia's hands, albeit involuntarily. In the Tribunal's assessment, this is so notwithstanding the fact that it is the Ministry of Finance's State Ownership Unit, and not the Office of the Chancellor of Justice, which manages Sweden's interest in Telia.[145]

72. On a balance of interests, that risk does not warrant maintaining the redactions of the MNO Contracts. In accordance with Article 9(5) of the IBA Rules, that risk can be avoided or at least significantly mitigated by requiring that officials of the Office of the Chancellor of Justice and other representatives sign a non-disclosure undertaking before accessing unredacted versions the MNO Contracts. The details of such undertaking are set out below.[146]

C. ALTERNATIVE AND SECONDARY REQUESTS

73. It follows from the analysis above that the Tribunal will order the production of unredacted versions of the MNO Contracts (and Components). Consequently, the Tribunal can dispense with reviewing the Respondent's alternative request seeking that the Claimant withdraw from the record the redacted version of the MNO Contacts.[147]

74. Similarly, the Tribunal's decision to order the production of the unredacted MNO Contracts (and Components) also largely supersedes the Respondent's secondary request seeking that the Claimant be precluded to "remedy any of the deficiencies in its Memorial" regarding

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[140] Reply, ¶ 36.

[141] **R-6**, Act on the Amendment of the Swedish Public Access to Information and Secrecy Act (Swedish Code of Statutes - SFS 2009:400), 3 March 2022, Ch. 42, Section 1.

[142] **R-4**, Telia Shareholdings, 31 December 2022.

[143] *See* **C-326**, Telia Corporate Governance - Nomination Committee.

[144] Response, ¶¶ 57-58; Rejoinder, ¶ 53.

[145] *See* Reply, ¶ 33 (undisputed by the Claimant).

[146] *Infra*, ¶ 75.ii.

[147] *Supra*, ¶ 22 (at b.).

the production of the MNO Contracts later in the proceedings.[148] In any event, pursuant to Section 15.3 of PO1, the Claimant remains entitled to respond to the "fact allegations, legal argument and evidence" that the Respondent may put forth with the Counter-Memorial.

V. ORDER

75. For the reasons set out above, the Tribunal:

i. Orders the Claimant to produce immediately unredacted versions of Exhibits C-319 to C-325 in full (including their amendments, annexes, appendices, and/or schedules), the 2020 contract with Hi3G stated to be "awarded but not signed" (in the Claimant's Memorial in paragraph 280 and Appendix I); and Appendices 1–8 to the Telia Master Agreement (collectively the "Documents"), except for:

   a) Purchase orders, which need not be produced at this juncture;

   b) Personal information and contact details of individuals (i.e., natural persons), which can remain redacted; and

   c) Any amendments, annexes, appendices, and/or schedules identified in Annex A to the Response: (i) marked as "intentionally deleted" to the extent that the Claimant has confirmed that such marking "formed part of the original contract"; or (ii) that the Claimant has confirmed "could not be found despite a thorough search".

ii. Directs the Claimant to produce the Documents only to the Tribunal and the Respondent's counsel team of Arnold & Porter, which may transmit the Documents to the Respondent's experts. The members of the Office of the Chancellor of Justice of Sweden and any other of the Respondent's representatives may only access the Documents upon providing a written undertaking to the Tribunal and the Claimant, according to which they will not disclose the Documents and any of their content outside this arbitration to any public or private entity, nor to any individual.

iii. Denies the Respondent's requests at paragraphs 71.b and 71.c of the Reply.

iv. Reserves its decision on costs.

v. Denies all other prayers for relief.

On behalf of the Tribunal,

[Signed]

Prof. Gabrielle Kaufmann-Kohler
President

[148] *Supra*, ¶ 22 (at c.).