

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Sauna UK BidCo Limited

v.

Republic of Finland

(ICSID Case No. ARB/24/38)

PROCEDURAL ORDER NO. 3

Decision on the Respondent's Request for Bifurcation

Members of the Tribunal

Mr. Audley Sheppard KC, President of the Tribunal

Mr. D. Brian King, Arbitrator

Mr. Eduardo Silva Romero, Arbitrator

Secretary of the Tribunal

Ms. Anna Holloway

10 November 2025 [*corrected*]

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I. PROCEDURAL BACKGROUND

1. This Procedural Order No. 3 addresses the Respondent's request for bifurcation of various preliminary issues.
2. Disputes arose in relation to the alleged investments of Sauna UK BidCo Limited ("**Sauna**" or the "**Claimant**") in the Republic of Finland ("**Finland**" or the "**Respondent**").
3. The Claimant initiated this arbitration on the basis of the Energy Charter Treaty ("**ECT**"), by filing a Request for Arbitration dated 7 August 2024 ("**RfA**").
4. The ICSID Acting Secretary-General registered the case on 23 August 2024, and the Tribunal was constituted on 6 March 2025.
5. On 14 May 2025, the Tribunal issued Procedural Orders Nos. 1 and 2 in this proceeding (respectively, "**PO1**" and "**PO2**").
6. In accordance with the procedural calendar set forth in PO1, the parties made the following submissions:
 - i. The Claimant submitted its Memorial on 19 June 2025 ("**Cl. Mem.**");
 - ii. The Respondent submitted its Request for Bifurcation of the Proceedings on 7 July 2025 ("**Req. Bif.**");
 - iii. The Claimant submitted its Answer on Bifurcation on 25 July 2025 ("**Answer Bif.**");
 - iv. The Respondent submitted its Reply on Bifurcation on 8 August 2025 ("**Reply Bif.**").
7. Also on 8 August 2025, the Tribunal in ICSID Case No. ARB/24/37 (the "**SPN Arbitration**"), a related case, issued its Decision on Bifurcation ("**SPN Decision on Bifurcation**" or "**SPN PO3**"). On 14 August 2025, the Claimant requested the Tribunal to provide directions regarding the manner in which the parties should address the SPN Decision on Bifurcation. At the Tribunal's invitation, the Respondent provided comments on this request on 15 August 2025. The Claimant submitted a copy of the SPN Decision on Bifurcation on 16 August 2025. On 18 August 2025, the Tribunal provided the Parties with directions, indicating when each party was to address the relevance of the SPN Decision on Bifurcation, and asking the Respondent to advise of any objection to the Tribunal reading the SPN Decision on Bifurcation by the end of the day. No such objection was received. In accordance with the Tribunal's directions:
 - i. The Claimant submitted its Rejoinder on Bifurcation on 22 August 2025 ("**Rej. Bif.**");
 - ii. The Respondent filed a short submission on the relevance of SPN PO3 only on 29 August 2025 ("**Surreply Bif.**"); and
 - iii. The Claimant filed a short reply submission on the relevance of SPN PO3 on 3 September 2025 ("**Surrejoinder Bif.**").
8. On 10 September 2025, as contemplated in the procedural calendar, the Tribunal informed the Parties of its decision on bifurcation, and indicated that its reasons would follow. The Tribunal informed the Parties that, having considered all the Parties' submissions, and having deliberated, it had determined to bifurcate the proceedings to allow the first of the Respondent's objections

(only) – the denial of benefits objection – to be heard in a preliminary phase. The remaining objections were joined to the merits.

9. The Tribunal now sets forth the reasons for that decision in this procedural order.
10. On 6 October 2025, the Respondent filed its Memorial on the Denial of Benefits Objection.
11. On 10 October 2025, having requested and received the Parties' proposals concerning an accelerated procedural calendar to address just the objection on which bifurcation was ordered, the Tribunal issued its ruling on the procedural calendar.
12. On 29 October 2025, the Claimant submitted its Counter-Memorial on Denial of Benefits Objection.
13. On 31 October 2025, the Respondent informed the Tribunal of the Parties' joint agreement to modify the steps in the procedural calendar relating to document production. The Claimant confirmed its agreement on 4 November 2025, and the Tribunal informed the Parties that it agreed to the proposed amendments later that same day. The procedural calendar, containing these agreed amendments, is confirmed in **Annex A** of this procedural order.

II. ICSID RULES - BIFURCATION OF PRELIMINARY OBJECTIONS

14. The ICSID Rules (2022) provide:

“Rule 42

Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) ...”

“Rule 43

Preliminary Objections

- (1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal (“preliminary objection”).
- (2) ...”

“Rule 44

Preliminary Objections with a Request for Bifurcation

...

- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) ...”

III. THE PARTIES' REQUESTS FOR RELIEF ON BIFURCATION

15. The Respondent requests that the Tribunal rule as follows:

For the foregoing reasons, Finland respectfully requests that the Tribunal bifurcate the proceedings such that Finland's preliminary objections shall be determined in a first phase, in accordance with the timetable set down in the Schedule at Annex B of Procedural Order No. 1 dated 14 May 2025.¹

16. The Claimant requests that the Tribunal rule as follows:

Sauna respectfully requests that the Tribunal reject Finland's Request for Bifurcation and award Sauna its full costs and expenses incurred for this phase of the proceedings.²

IV. THE RESPONDENT'S OBJECTIONS TO JURISDICTION/ADMISSIBILITY FOR WHICH BIFURCATION IS SOUGHT

17. The Respondent's request to suspend the merits relates to five objections to jurisdiction/admissibility. In this section, the Tribunal briefly summarizes those objections to provide the necessary context for the discussion on bifurcation. This summary is not intended to be comprehensive.
18. The Tribunal acknowledges the Claimant's statement that in its submissions it did not address the substance of the Respondent's objections in detail, but provided "high-level preliminary comments, focusing principally on the character and inherent weakness of the objections to highlight their unsuitability for bifurcation".³ That was the appropriate approach to take for this bifurcation application.

A. FIRST OBJECTION: DENIAL OF BENEFITS TO SAUNA

19. Article 17 of the ECT allows a Contracting Party to deny the advantages of Part III of the ECT (often referred to as "**denial of benefits**" and "**DoB**") to a legal entity if "nationals of a third [S]tate own or control such entity" and "if that entity has no substantial business activities in the Area of the Contracting Party in which it is organised."⁴ The Respondent asserts that Finland issued an effective denial of benefits notice on 15 July 2024 ("**DoB Notice**").

20. The Respondent argues that both limbs of Article 17(1) are satisfied vis-à-vis Sauna:

i.

[REDACTED]

ii.

[REDACTED]

21. The Respondent notes that Article 17(1) provides no guidance as to the timing of the exercise of an ECT Contracting Party's right to deny benefits, and refers to jurisprudence holding that there is no temporal limitation to this provision. In the Respondent's view, a Contracting Party therefore

¹ Req. Bif., para. 109. *See also* Reply Bif., para. 72.

² Answer Bif., para. 73. *See also* Rej. Bif., para. 63.

³ Answer Bif., para. 9. The Claimant reserved its right to supplement and/or amend the arguments on the merits of the objections at the appropriate time in due course.

⁴ Req. Bif., paras. 13-14.

⁵ Req. Bif., paras. 17-25.

may deny benefits under Article 17(1) “at any time and without formality, including after the commencement of an arbitration,” provided that the conditions for doing so are met.⁶ Here, Finland indicated its intention to deny benefits in March 2024 (two months after the Notice of Dispute) and issued the DOB Notice in July 2024 (the month before the Request for Arbitration was filed with ICSID).⁷

22. The Respondent contends that its DoB Notice denying Sauna the benefits of the ECT renders the Claimant’s claims inadmissible.⁸

B. SECOND OBJECTION: *LIS PENDENS* OBJECTION

23. The Respondent points out that the Claimant filed its RfA on the same day as its alleged privy, SPN, filed a separate Request for Arbitration in the SPN Arbitration (“**SPN RfA**”). The Respondent asserts that the two RfAs are nearly identical, and the Memorials filed in each arbitration are substantially verbatim. Moreover, in both arbitrations, restitution is the primary remedy sought, with full compensation for losses sought in the alternative. As a 40% shareholder in SPN, [REDACTED]

[REDACTED] The Respondent argues that, by causing SPN to pursue an ECT claim against Finland and to pursue an identical ECT claim in this proceeding, Sauna is trying to have a second “bite at the apple.”⁹

24. This, the Respondent contends, is prohibited under the doctrine of *lis pendens* and the Claimant’s claims must for this reason be ruled inadmissible. This doctrine, which has as its purpose relieving parties of the costs and vexation of multiple lawsuits and prevention of inconsistent decisions, will apply where “two judicial organs have equal title to make a determination over the same dispute.” This will be the case where the different proceedings are: (a) based on the same, or substantially the same, legal grounds (i.e., causes of action); (b) directed at obtaining the same, or substantially the same, relief; and (c) pending between the same parties or those who are in privity of interest with them. Relying, *inter alia*, on the Award in *Frenkel v. Croatia*, the Respondent emphasizes that strictly identical parties, causes of action and relief (i.e., “the triple identity test”) is not required – the analysis should be guided by substance over form.¹⁰
25. Here, the conditions for the application of *lis pendens* are satisfied: the causes of action and relief sought in the two cases are exactly the same (they impugn the same measure, rely on the same treaty, and seek the same relief), and Sauna and SPN are in privity of interest. In this regard, the Respondent emphasizes that Sauna and SPN jointly issued the Notice of Dispute and retained the same counsel, that Sauna has participated in the conduct of the SPN Arbitration, and that Sauna’s claims in this arbitration are entirely derived from its 40% shareholding in SPN.¹¹
26. In its Reply, the Respondent addresses the Claimant’s contention that *lis pendens* cannot be applied because the third element – the requirement that there be privity of interest between the parties in the two arbitrations – cannot be met. The Respondent contends that it has “provided ample case law and academic authority to demonstrate that it is preferable to adopt a substance-

⁶ Req. Bif., paras. 26-27.

⁷ Req. Bif., para. 30.

⁸ Req. Bif., para. 1(a).

⁹ Req. Bif., paras. 34-41.

¹⁰ Req. Bif., paras. 41-49, citing to *Ahron G. Frenkel v. Republic of Croatia*, ICSID Case No ARB/20/49, Award, 29 January 2025, **RL-019**, para. 159.

¹¹ Req. Bif., paras. 50-52.

over-form approach and focus on whether SPN is in privity of interest with Sauna.” Moreover, the Claimant’s contention that ultimate control over the SPN Arbitration cannot be imputed to Sauna is without basis; the record clearly shows that Sauna exercises control over SPN, and there is no basis for requiring that it exercise “independent” control, as *RSM v. Grenada* established.¹² The Respondent also points (again) to the Award in *Frenkel v. Croatia*, where the tribunal held that the test is “whether the parties ... have the same substantive interest in the two proceedings and ... participated in the preparation and conduct of each proceeding,” factors which are said to be satisfied here.¹³

C. THIRD OBJECTION: ABUSE OF PROCESS OBJECTION

27. Having a further “bite at the apple” is also, the Respondent contends, prohibited under the doctrine of abuse of process, again rendering Sauna’s claims inadmissible.¹⁴ This doctrine, derived from the principle of good faith, has been held applicable where an investor “engages in the ‘double pursuit of the same claim in respect of the same interest’ or ‘the multiplication of arbitral proceedings to maximize chances of success’.”¹⁵
28. In the Respondent’s view, Sauna’s pursuit of the same relief in two parallel treaty arbitrations constitutes an abuse of process: there is “privity of interest between Sauna and SPN”; the two arbitrations “pertain to the exact same dispute;” the dispute was “notified to Finland in a single joint Notice of Dispute under the same treaty;” and “if SPN prevails in the SPN Arbitration and Sauna prevails in this arbitration, Sauna would obtain the same relief twice.”¹⁶ The Respondent rejects, in this context, Sauna’s suggestion that there are important substantive differences between the two proceedings: a redline comparison of the two memorials makes it obvious that there are no substantive differences.¹⁷
29. Finally, the Respondent rejects Sauna’s suggestion that an undertaking that it will not recover twice resolves the point. Finland will still be required to defend itself in two separate arbitrations at additional expense, and to bear the risk of inconsistent decisions. Further, any undertaking will not be enforceable once the Tribunal becomes *functus officio* and so double recovery remains a risk.¹⁸

D. FOURTH OBJECTION: FORK-IN-THE-ROAD OBJECTION

30. The Respondent asserts that another privy of the Claimant, Caruna, is presently pursuing the same relief from Finnish courts, thus “depriving the Tribunal of jurisdiction under Article 26(3) of the ECT or, alternatively, rendering the Claimant’s claims inadmissible.”¹⁹

¹² Reply Bif., paras. 45-49, citing to *Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg, and RSM Production Corporation v. Grenada*, ICSID Case No. ARB/10/6, Award, 10 December 2010, **RL-023**.

¹³ Reply Bif., paras. 49-51, citing to *Ahron G. Frenkel v. Republic of Croatia*, ICSID Case No. ARB/20/49, Award, 29 January 2025, **RL-019**, para. 159.

¹⁴ Req. Bif., para. 49.

¹⁵ Req. Bif., para. 57, citing to *Ampal-American Israel Corp and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016, **RL-004**, para. 331, and *WM Mining Company, LLC v. Mongolia*, ICSID Case No. ARB/21/8, Award, 29 August 2024, **RL-047**, para. 122.

¹⁶ Req. Bif., para. 59; Reply Bif., paras. 53-54.

¹⁷ Reply Bif., para. 55.

¹⁸ Req. Bir., para. 60.

¹⁹ Req. Bif., para. 1(c).

31. Specifically, Caruna, wholly owned by SPN, which in turn is 40% owned by Sauna, is currently pursuing a claim in the Finnish Market Court under “domestic Finnish [] law.” While the Claimant is not a named party, the Claimant’s executives also serve, or have served, on the Caruna Board of Directors, establishing that the Claimant is “directing and controlling Caruna’s prosecution of its claim in that proceeding.”²⁰ In the Respondent’s view, the claims are not wholly independent; rather, the claims overlap in “all relevant respects” (challenging the same measures, requesting the same relief, running the same arguments, and relying on much of the same documentary, witness and expert evidence).²¹
32. Hence, the Respondent argues, the Tribunal has no jurisdiction because of the precondition to consent to arbitration in the ECT. Article 26(3)(b)(i) of the ECT provides that “[t]he Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute” to the Contracting Party’s domestic courts “under subparagraph (2)(a) or (b)” (often referred to as a “**fork-in-the-road**” objection). Finland is one of the Annex ID listed Contracting Parties.²² Thus, Finland’s consent is conditioned on the Investor not having previously submitted the dispute to the Finnish courts; here, the Claimant “acting through its privies” elected to pursue local remedies in Finnish courts.²³
33. On the Respondent’s case, Article 26(3)(b)(i)’s reference to an “Investor” having submitted the dispute to the local courts can be satisfied where that action is formally taken by an Investor’s privies that are part of the same corporate chain, as is the case here.²⁴ Moreover, the fact that the relief sought was sought on the basis of domestic law does not preclude the application of Article 26(3)(b)(i), as has been established in other cases. Rather, properly construed, the provision “is engaged when the claims in the parallel proceedings impugn the same measures and pursue the same or equivalent relief...”²⁵
34. In its Reply, the Respondent addresses Sauna’s contention that the fork-in-the-road objection should fail because Finland has not sought to establish the “triple identity test.” The Respondent argues that this test is not the only test applicable, and that its objection does not become frivolous because it disagrees with Sauna on the applicable test. It notes that in *Suffolk v. Portugal*, bifurcation was granted even though the respondent State had not applied the triple-identity test. Contrary to Sauna’s assertions, the substance-over-form approach contended for by the Respondent is endorsed by other tribunals addressing a fork-in-the-road objection under Article 26(3)(b).²⁶

E. FIFTH OBJECTION: INADMISSIBILITY

35. In the alternative, the Respondent frames the relevance of the pursuit of domestic proceedings in Finland in terms of an inadmissibility objection: it argues that the Claimant’s claims of breach of Article 10(1) of the ECT require an assessment of the *totality* of Finland’s conduct in respect of the investment which necessarily extends to the treatment by the Finnish courts in the domestic

²⁰ Req., Bif., para. 60 (referencing Case C-48/23, *Alajärven Sähkö Oy and Others, Elenia Verkko Oyj v. Energiavirasto*, ECLI:EU:C:2025:144, Judgment (Court), 6 March 2025, **RL-013**, 72-74).

²¹ Req. Bif., paras. 65-67 (and related tables).

²² Req. Bif., paras. 68-71.

²³ Req. Bif., para. 72.

²⁴ Req. Bif., paras. 74-80; Reply Bif., para. 59.

²⁵ Req. Bif., paras. 81-86 (referencing, *inter alia*, *Mercuria Energy Group Limited v. Republic of Poland* (I), SCC Case No. 096/2008, Award on Jurisdiction, 17 December 2009, **RL-032**).

²⁶ Reply Bif., paras. 58-59 (referencing *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, 1 March 2024, **RL-042**, para. 103).

action. The Tribunal cannot assess the totality of Finland's conduct until a final decision of the Finnish court has been rendered. As such, the Claimant's claim is premature and must be dismissed as inadmissible.²⁷

36. In its Reply, the Respondent rejects Sauna's argument that Finland is seeking to impose a requirement of "exhaustion of local remedies." Rather, the objection arises because of Sauna's choice to cause its privies to institute the domestic proceedings (seeking the same restitutionary relief sought in this proceeding). It is because of that election that the Tribunal in this proceeding must now await the outcome of those Finnish proceedings, in order to be able to consider the totality of Finland's treatment of Sauna's investment. It emphasizes in this regard that the *Alghanim* decision provides support for this approach, demonstrating the seriousness of this objection.²⁸ While the facts in *Alghanim* differ from those here, as Sauna has pointed out, the general principle articulated by that tribunal remains of relevance. The Respondent also emphasizes that Sauna itself has asked the Tribunal to consider the "impact" of the 2023 Confirmation Decision in monetary terms as part of its assessment of the legality of Finland's conduct, and states that sheer logic dictates that the outcome of these Finnish proceedings must be relevant to the Tribunal's assessment.²⁹

V. THE PARTIES' POSITIONS ON BIFURCATION

A. THE RESPONDENT'S POSITION

1. The Applicable Test for Bifurcation

37. The Respondent addresses the circumstances to be taken into account as specified in Rule 44(2) in the following terms.
38. *First*, for the consideration of whether bifurcation "would materially reduce the time and cost of the proceeding" (Rule 44(2)(a)).³⁰
- i. the overarching consideration is whether bifurcation would be "efficient," i.e., would "result in a gain of time or in reduced costs." Determining whether this will be the case requires a *prima facie* review of the preliminary objections to determine whether they are serious/ substantial (versus frivolous/vexatious).
 - ii. where multiple preliminary objections are advanced, *partial* bifurcation is generally considered to be "contrary to procedural economy;" moreover, the "possibility" for procedural economy, where an objection is serious, will outweigh the risk of inefficiency should the objection be dismissed.
39. *Second*, for considering whether "determination of the preliminary objection would dispose of all or a substantial portion of the dispute" (Rule 44(2)(b)), it is not necessary that the objections

²⁷ Req. Bif., paras. 91-105.

²⁸ Reply. Bif., para. 65 (referencing *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan*, ICSID Case No. ARB/13/38, Award, 14 December 2017, **RL-017**, paras 306-312).

²⁹ Reply Bif., paras. 65-69.

³⁰ Req. Bif., paras. 6-8.

dispose of the entire dispute – narrowing the scope of issues to be resolved at the merits phase is sufficient.³¹

40. *Third*, in considering whether the preliminary objection and the merits are so intertwined as to make bifurcation impractical (Rule 44(2)(c)), this will only militate against bifurcation if the questions of fact that need to be addressed for the objection are duplicative of questions and evidence that would need to be addressed at the merits phase. Absent that, bifurcation is the more procedurally efficient approach.³² The Respondent argues that there is no basis for the Claimant’s suggestion that any overlap with the merits, no matter how small, should militate against bifurcation. Rather, the question is whether the objection is so intimately linked to the merits that it is impossible to dispose of the objection in preliminary form. Just because an objection requires the examination of some factual evidence does not render it unsuitable for determination on a bifurcated basis.³³
41. In its Reply, the Respondent asserts that the Claimant “attempts to advance a different, incorrect and baseless interpretation of criteria ...” In particular, the Claimant wrongly argues that in undertaking the *prima facie* assessment of whether the preliminary objections are “substantial,” “the Tribunal can ‘assess the likelihood of success of a preliminary objection’ by considering ‘objective factors’ such as ‘whether a jurisdictional objection goes against settled authority or is based on a minority view.’” In the Respondent’s view, however, there is no legal basis for conflating the question of whether an objection is “substantial” with the question of whether it is likely to succeed. Rather, the Tribunal is merely required to consider whether the objections have factual and legal support and are arguable and advanced in good faith,³⁴ and the Claimant’s own authorities demonstrate that prior decisions have no relevance to an assessment of the serious and substantial nature of a preliminary objection.³⁵
42. Also in its Reply, the Respondent rejects the Claimant’s argument that the Respondent was wrong “to suggest that, while the actual efficiency gain will ultimately depend on the outcome of the objections, the ‘possibility’ for procedural economy coupled with the serious nature of the questions raised by an objection will outweigh any risk of inefficiency should the preliminary objections subsequently be dismissed.”³⁶ In the Respondent’s view, prior ICSID tribunals have adopted the approach advocated for here by the Respondent, whereas the Claimant can invoke only a single academic article arguing for “the novel proposition that tribunals should apply a ‘presumption against’ bifurcation unless they are ‘confident’ that a preliminary objection is ‘more likely than not’ to result in termination of the proceeding” – and ICSID Arbitration Rule 44(2) contains no such presumption. It notes, however, that even if prejudging the merits were appropriate, that would lie in the Respondent’s favour.³⁷

³¹ Req. Bif., para. 9.

³² Req. Bif., paras. 10-11.

³³ Reply Bif., paras. 16-18.

³⁴ Reply Bif., paras. 9-11

³⁵ Reply Bif., para. 12 (referencing *inter Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015, **CL-070**; *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Procedural Order Deciding Bifurcation and Non-Bifurcation, 25 January 2013, **CL-067**).

³⁶ Reply Bif., para. 13, referencing Answer Bif., para. 19.

³⁷ Reply Bif. paras. 13-15.

2. Application of the Test

43. The Respondent addresses the application of each of the criteria of Rule 44(2) on an objection-by-objection basis.

a. Denial of Benefits Objection

44. The Respondent argues that:
- i. bifurcating this objection presents “the potential for immense savings in time and costs,” because, if upheld, the Claimant’s case would be dismissed entirely.³⁸
 - ii. this objection is legally and factually distinct from the merits of the Claimant’s allegations; for similar reasons other tribunals have found denial of benefits objections suitable for bifurcation.³⁹ Although some factual evidence will need to be examined, contrary to Sauna’s arguments, this is limited and discrete (especially since Sauna has already made formal representations regarding the two questions of fact that would require determination, namely it has stated its ownership [REDACTED]). In any event, this gives rise to no significant overlap with evidence on the merits.⁴⁰
45. In its Reply, the Respondent addressed the Claimant’s argument that the weight of authority goes against Finland’s denial of benefits objection. In the Respondent’s view, this is mistaken. First, “if anything, where tribunals are divided and the law is unsettled, the proposition is necessarily a serious one.” Second, Finland’s position is also supported by the decisions of other ECT and non-ECT tribunals, with the five most recent publicly available decisions addressing a denial of benefits objection supporting the Respondent’s position. The Respondent’s position thus clears the bar of a reasonably arguable proposition “by a wide margin.”⁴¹

b. Lis Pendens Objection

46. The Respondent contends that the *lis pendens* objection requires the Tribunal to make only a discrete legal determination, involving no evidential enquiries into the merits. Further, if the objection were to be accepted, all of the Claimant’s claims would be rendered inadmissible.⁴²
47. In its Reply, the Respondent addresses the Claimant’s contentions that the *lis pendens* objection would not dispose of the case. It emphasizes that other tribunals have consistently treated the *lis pendens* objection as affecting admissibility such that, if made out on the facts of a case, a claim would be disposed of on grounds of inadmissibility. Although no tribunal to date has upheld a *lis pendens* objection, success turns on the specific facts of the case and no generalizations can be drawn. Moreover, it is appropriate to draw support from cases dealing with *res judicata*, because

³⁸ Req. Bif., paras. 15, 33.

³⁹ Req. Bif., paras. 31-32.

⁴⁰ Reply Bif., paras. 33-37.

⁴¹ Reply Bif., paras. 28-32 (citing to *Zaur Leshkasheli and Rosserlane Consultants Limited v. Republic of Azerbaijan*, ICSID Case No. ARB/20/20, Award, 21 March 2025, **RL-048**, paras. 560, 567 and 575, and *Durres Kurum Shipping SH. P.K., Durres Container Terminal SH.A, Metal Commodities Foreign Trade Corp., Altberg Developments v. Republic of Albania*, ICSID Case No. ARB/20/37, Final Award, 26 July 2024, **RL-016**, paras. 346 and 352 [REDACTED]).

⁴² Req. Bif., paras. 53-54.

this is a related doctrine, born out of the same underlying concern to reduce multiplicity of litigation.⁴³

c. Abuse of Process Objection

48. The Respondent argues that its abuse of process objection requires the Tribunal to determine a discrete and distinct point of law, requires no legal, factual or evidential enquiries pertaining to the merits, and that, if the objection were accepted, all of the Claimant's claims in this arbitration would be rendered inadmissible.⁴⁴

d. Fork-in-the-Road Objection

49. The Respondent argues that the fork-in-the-road objection only requires the resolution of discrete questions of treaty interpretation that do not relate at all to the merits of the Claimant's case. Moreover, if successful, the entire case would be dismissed for lack of jurisdiction.⁴⁵
50. The Respondent rejects the suggestion that considering this objection will require a full review of the same or substantially the same facts, arguments and evidence as on the merits of the case. The Respondent emphasizes that the Claimant has not identified any instances, among those instances of overlap between the cases listed by Finland in its Request for Bifurcation, where the overlap is "anything but genuine." In any event, the objection would require a simple comparison of factual claims being made in the different *fora* (and not the determination of the disputed points of fact themselves). No detailed examination of the evidence is required.⁴⁶

e. Inadmissibility Objection

51. Equally, the inadmissibility objection requires only the resolution of a discrete point of international law, requiring no examination of the facts alleged by the Claimant on the merits. Again, a finding in favour of this objection would result in the dismissal of the case in its entirety.⁴⁷
52. Finally, the Respondent also notes that even if the Tribunal were to reject the bifurcation of the fork-in-the-road and inadmissibility objections, "sound and efficient case management requires that the Tribunal await final judgment from the Finnish courts and use the intervening time to hear Finland's other preliminary objections first, in a bifurcated proceeding."⁴⁸

3. Response to Claimant's Arguments About Procedural Efficiency

53. In its Reply, the Respondent addressed the Claimant's arguments about procedural efficiency in general terms (without reference to its specific objections). It emphasized that it is common ground that the overarching consideration is whether bifurcation would generate procedural efficiencies.⁴⁹

⁴³ Reply Bif., paras. 40-44.

⁴⁴ Req. Bif., paras. 62-63.

⁴⁵ Req. Bif., paras. 73, 88-90. Reply Bif., paras. 60-62.

⁴⁶ Reply Bif., paras. 62-63.

⁴⁷ Req. Bif., paras. 106-107; Reply Bif., para. 70.

⁴⁸ Req. Bif., paras. 68(c), 108; Reply Bif., para. 71.

⁴⁹ Reply Bif., para. 19.

54. It rejected what it described as the Claimant’s “myopic” focus on the five-month time difference between hearing dates in the bifurcated and non-bifurcated scenarios in the procedural calendar and the amount of time the Claimant says would be needed to schedule a hearing on the merits if the bifurcated objections were rejected. Assessing efficiency involves not only an analysis of the possible duration of a bifurcated arbitration but also an assessment of the possible cost reduction from limitation/simplification of the matters to be decided at the merits phase (which here is “enormous”). Indeed, tribunals have granted bifurcation despite there being a limited time difference between the agreed hearing dates in bifurcation and non-bifurcated scenarios.⁵⁰

4. Relevance of the SPN Decision on Bifurcation

55. The Respondent argues that the SPN Decision on Bifurcation (rejecting the application for bifurcation in that proceeding) has “limited relevance” to this Tribunal’s decision on the Respondent’s bifurcation request. It emphasizes that as a general principle, each tribunal must assess the appropriateness of bifurcation independently, based on the particular preliminary objections raised and the specific context of the relevant case.⁵¹
56. It further emphasizes that different preliminary objections are raised in the two proceedings (with the *lis pendens* and abuse of process objections only being raised in *this* arbitration) and also that the distinct grounds underlying the SPN Decision on Bifurcation on the denial of benefits objection are not present here (namely, that if successful, this objection would not have disposed of the dispute in full because the claim by one of the three claimants would have remained regardless). If anything, the Respondent argues, that reasoning only reinforces the merits of bifurcating in this case, where the denial of benefits objection would resolve the whole case.⁵² For the fork-in-the-road and inadmissibility objections, the Respondent takes issue with the findings of the SPN tribunal.⁵³

B. THE CLAIMANT’S POSITION

1. The Applicable Test for Bifurcation

57. The Claimant emphasizes that bifurcation is a procedural tool to promote efficiency and fairness of arbitral proceedings and that, in accordance with this “overarching consideration,” unless bifurcation is likely to reduce the time and cost of proceedings, there is no justification for it.⁵⁴
58. The Claimant states that the Tribunal should undertake a holistic and case-specific assessment of Finland’s request to bifurcate, against that “overarching consideration.” The factors in ICSID Arbitration Rule 44 guide that determination; the key question is whether bifurcation is more likely to *increase* or *decrease* the time and costs of the proceeding.⁵⁵
59. The Claimant argues that while tribunals cannot prejudge the merits of an objection, they can (and should) “consider the quality of the particular objection raised on a *prima facie* basis in order to assess its seriousness and substantiality.”⁵⁶ In this regard, the Claimant suggests that a tribunal is

⁵⁰ Reply Bif., paras. 21-24.

⁵¹ Surreply Bif., p. 1.

⁵² Surreply Bif., pp. 1-3.

⁵³ Surreply Bif., pp. 3-4.

⁵⁴ Answer Bif., para. 10.

⁵⁵ Answer Bif., paras. 11-12; Rej. Bif., para. 8.

⁵⁶ Answer Bif., para. 13.

permitted to take into account objective factors that enable it to assess the likelihood of success of an objection, including whether the objection goes against settled authority / is based on a minority view. Objections that are inherently less likely to succeed because they go against persuasive authority cannot justify the substantial risk of delay, increase in costs, and prejudice which would be caused if the bifurcated objections are dismissed and the merits phase delayed.⁵⁷ The Claimant emphasizes that it is not inviting the Tribunal to consider whether a specific objection on the specific facts of the case is likely to succeed, but rather merely to “acknowledge[e] where the weight of authority lies on a particular legal issue.” It notes that the SPN Tribunal agreed that the weight of authority is a relevant consideration.⁵⁸

60. The Claimant thus rejects Finland’s suggestion that the “possibility” of success “will outweigh any risk of inefficiency.”⁵⁹ Rather, tribunals should consider all relevant circumstances and determine whether bifurcation would be more likely to increase, or to decrease, time and costs of the proceeding. The Claimant references in this regard an empirical study by Lucy Greenwood suggesting there should be a presumption against bifurcation.⁶⁰
61. In its Rejoinder, the Claimant also rejects the characterization of its position by the Respondent as one in which any overlap with the merits, no matter how trivial, should militate against bifurcation. For the Claimant, the “relevant question is whether the preliminary objections are intertwined with the merits such that any procedural efficiency gains resulting from bifurcation would be eroded.”⁶¹

2. Application of the Test

62. Like the Respondent, the Claimant addresses the application of the test for bifurcation on an objection-by-objection basis.

a. Denial of Benefits Objection

63. *First*, the Claimant argues that this objection faces serious legal obstacles militating against bifurcation: contrary to Finland’s arguments, the weight of ECT authority holds that a State may *not* deny benefits under Article 17(1) of the ECT after the dispute has already arisen, in the manner that Respondent purported to do here. This weighs against bifurcation.⁶²
64. In this context, the Claimant argues that “the Tribunal should take into account the existing body of jurisprudence as a factual matter that weighs on the question of bifurcation.” It characterizes Finland’s focus on recent jurisprudence and its assertion that this demonstrates that tribunals are “divided” and the law “unsettled” as “overstatement at best.” Specifically, Finland’s reliance on non-ECT decisions is misplaced and the two ECT decisions on which Finland relies are acknowledged outliers. Moreover, several ECT cases confirm that where a respondent State was familiar with an investor’s ownership structure yet failed to deny benefits before a dispute had arisen, it would no longer be open to that State to deny benefits after the dispute arose, which is

⁵⁷ Answer Bif., paras. 14-17.

⁵⁸ Rej. Bif., paras. 11-12 (referencing *Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*, ICSID Case No. ARB/24/37, Procedural Order No. 3 (Bifurcation), 8 August 2025 (“**SPN PO3**”), **CL-098**, para. 104).

⁵⁹ Answer Bif., para. 19 (referencing Req. Bif., para. 8).

⁶⁰ Answer Bif., para. 19 (referencing Lucy Greenwood, “Revisiting Bifurcation and Efficiency in International Arbitration Proceedings,” 36(4) JOURNAL OF INTERNATIONAL ARBITRATION 421 (2019), **CL-093**, p. 425).

⁶¹ Rej. Bif., para. 13.

⁶² Answer Bif., paras. 21-23; Rej. Bif., paras. 20-21.

precisely the case here. The recent case of *ACF v. Bulgaria*, which was not mentioned by the Respondent, notes the consistent findings of ECT tribunals and found that Article 17(1) cannot be invoked after a dispute had arisen.⁶³

65. The Claimant also states that the Respondent is wrong to claim that the only question of law to be decided relates to when a State may validly exercise its right to deny benefits; the Tribunal will also need to decide “(i) [REDACTED]

(ii) [REDACTED]

and (iii) [REDACTED]

how any change in an investor’s ownership and/or business activities after the investment is made impacts the right to deny benefits under the ECT.”⁶⁴

66. *Second*, addressing this objection will require a detailed and an involved factual investigation that risks overlapping materially with merits issues (including on matters of ownership, control, and the existence of substantial business activities, the last of which in particular is likely to require an assessment of some of the same documentary and witness evidence as will be relevant to the merits questions). This also militates against bifurcation.⁶⁵

b. *Lis Pendens* Objection

67. The Claimant argues that this objection is not serious and substantial.
68. *First*, it is not apt for bifurcation “as it cannot result in the barring of a claim or authorise a tribunal to decline to exercise its jurisdiction over a claim validly presented to it for determination.”⁶⁶ *Lis pendens* merely describes the situation in which the same claim is pending before multiple bodies; it does not carry any automatic consequence for either set of proceedings. Rather, where the situation arises, it is an issue of case management. In this regard, the Claimant emphasizes that there is no precedent for a tribunal declining jurisdiction or ruling a claim inadmissible on the basis of *lis pendens*. The Respondent’s reliance on *res judicata* cases to support its argument is misplaced; for *res judicata* to apply there must have been a final decision by the judicial body in the other proceeding considering the same claim between the same parties, which indisputably does not apply here.⁶⁷
69. *Second*, in any event, *lis pendens* requires the application of the triple identity test, which Finland conceded is not met here; and hence the objection is not serious or substantial.⁶⁸ Finland’s attempt to set out a more expensive formulation of the test (in which the parties can be different if they are “privies”) is unsupported by any arbitral authority on *lis pendens*.⁶⁹
70. *Third*, even if it were sufficient that the parties before the different tribunals were “privies,” Finland cannot even meet *that* test on the facts. Sauna is only one of five unrelated shareholders

⁶³ Rej. Bif., paras. 21-22 (referencing, *inter alia*, *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award, 5 January 2024, CL-097, para. 1470).

⁶⁴ Rej. Bif., para. 20.

⁶⁵ Answer Bif., paras. 24-27; Rej. Bif., paras. 23-26.

⁶⁶ Answer Bif., para. 28(a).

⁶⁷ Answer Bif., paras. 28(a), 30-35; Rej. Bif., paras. 36-40.

⁶⁸ Answer Bif., paras. 29(b), 36-37.

⁶⁹ Answer Bif., para. 38; Rej. Bif., paras. 27-30.

of SPN, with a minority 40% shareholding (not a controlling stake) – indeed, Finland concedes that Sauna could only exercise *joint* control over SPN with an unrelated shareholder (Supernova), and relies on baseless arguments that (i) it has a “blocking minority” through the directors it may appoint to the SPN Board, [REDACTED]

[REDACTED] There is no precedent of a tribunal finding that a minority shareholder without independent control of the subsidiary is a “privy” of that subsidiary, and the cases on which the Respondent relies are distinguishable on the facts.⁷⁰ The Claimant points to *Eskosol v. Italy* as an example of a tribunal finding that even a majority 80% shareholder and the relevant subsidiary were not privies.⁷¹ It also emphasizes that Sauna’s rights and interests are different to those of SPN.⁷² Finally, the Claimant argues that the appropriate response to the risk of double recovery is not to decline jurisdiction or declare a claim inadmissible. Rather, precedent supports the view that a good faith undertaking by the relevant party – which Sauna has confirmed it is prepared to give in this proceeding – is sufficient to address the issue.⁷³

c. Abuse of Process Objection

71. The Claimant argues that the abuse of process objection is not serious and substantial and cannot support bifurcation.
72. *First*, a finding of abuse of process requires that one and the same party pursue the claims, and for the reasons explained in the context of the *lis pendens* objection, this threshold matter cannot be satisfied.⁷⁴
73. *Second*, it is widely accepted that the bar to establishing that a claim is abusive is high (requiring that it is “inherently vexatious”), and Finland has not even attempted to articulate what the support for abuse is here. The fact that the parties in the two arbitrations use the same counsel (for efficiency purposes), and the fact that there are similarities in pleadings, does not clear this bar.⁷⁵ The Claimant relies in this regard on the *Bob Meijer v. Georgia* decision, in which an abuse of process objection in substantially the same terms as that advanced here was rejected.⁷⁶

d. Fork-in-the-Road Objection

74. The Claimant argues that the fork-in-the-road objection cannot support bifurcation.
75. *First*, the Claimant argues that this objection also does not meet the serious or substantial threshold: no ECT tribunal has ever upheld such an objection (with 16 tribunals rejecting such an objection). That should inform this Tribunal’s assessment of whether bifurcation of this objection is likely to result in procedural efficiency.⁷⁷ The Claimant notes that the Respondent has not even attempted to argue that it could satisfy the well-established “triple identity test” for this objection;

⁷⁰ Answer Bif., paras. 39-41, 45-46, 48-49; Rej. Bif., paras. 31-33.

⁷¹ Answer Bif., para. 42 (referencing *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Award, 4 September 2020, CL-081).

⁷² Answer Bif., paras. 43-44; Rej. Bif., para. 34.

⁷³ Answer Bif., para. 47; Rej. Bif., para. 44.

⁷⁴ Answer Bif., para. 52; Rej. Bif., para. 42.

⁷⁵ Answer Bif., paras. 53-59; Rej. Bif., para. 43.

⁷⁶ Rej. Bif., para. 43 (referencing H. Todorovic, “Revealed: In *Bob Meijer v. Georgia*, ICSID tribunal finds that preparatory expenses do not constitute covered investments and gives deference to findings in related ICC arbitration, dismissing remaining claims on the merits,” INVESTMENT ARBITRATION REPORTER (2025), 7 August 2025, CL-099, pp. 6 and 7 of the PDF).

⁷⁷ Answer Bif., para. 60; Rej. Bif., para. 47.

rather it seeks to collapse the separate corporate personalities of different legal entities, recycling its “privies” argument, for which there is no legal or factual basis.⁷⁸

76. *Second*, the Claimant asserts this objection presents a substantial overlap with the merits, again weighing heavily against bifurcation. To find that there is a complete “overlap in all relevant respects” between the present case and the Market Court administrative action, the Tribunal would have to complete a full review of the same or substantially the same facts, legal arguments and evidence that it would need to consider at the merits stage, a fact which is underscored by the Respondent’s 7-page comparison table. That engagement would defeat any efficiency gains that could be provided by bifurcation.⁷⁹ The Claimant emphasizes that the SPN Tribunal’s findings in the SPN Decision on Bifurcation support the Claimant’s arguments here.⁸⁰

e. Inadmissibility Objection

77. The Claimant argues that the inadmissibility objection lacks any substantial basis and is not suitable for bifurcation.
78. *First*, the Claimant says that this alternative objection rests on an incorrect proposition that the Claimant’s Finnish subsidiaries must exhaust domestic remedies before Sauna can assert its ECT claims. That proposition is rejected by the weight of authority. In this context, the Claimant rejects Finland’s assertion that there is legal support for its arguments in the *Alghanim* decision; there, the tribunal made a different finding – that it would be inappropriate to exclude domestic court decisions that had already been rendered from an assessment of whether State-imposed taxes were arbitrary (and constituted a denial of justice).⁸¹
79. *Second*, even as a matter of first impression the objection is not credible; State treatment by all State organs will always be open to change and on Finland’s case, no investment arbitration would ever be ripe because circumstance may always change.⁸²
80. *Third*, in the Claimant’s view, this objection is necessarily intertwined with the merits in the same manner as the fork-in-the-road variant (see para. 76 above). Bifurcating it would lead to duplication with the merits phase and unnecessarily prolong these proceedings. Claimant relies in this regard on the SPN Decision on Bifurcation.⁸³

3. Relevance of the SPN Decision on Bifurcation

81. The Claimant argues that it is appropriate for this Tribunal to consider the SPN Decision on Bifurcation. The Claimant’s submissions already account for the differences in the preliminary objections sought in the two requests for bifurcation, and such differences are “no obstacle to this Tribunal considering the SPN Decision [on Bifurcation] and its reasoning where it relates to the same or similar matters as are now before this Tribunal.” The Claimant considers the SPN

⁷⁸ Answer Bif., paras. 61-62; Rej. Bif., paras. 46-49.

⁷⁹ Answer Bif., paras. 63-66; Rej. Bif., paras. 50-55.

⁸⁰ Rej. Bif., paras. 53-54 (referencing CL-098, SPN PO3, para. 96)

⁸¹ Answer Bif., paras. 67-68(a); Rej. Bif., paras. 65-66.

⁸² Answer Bif., paras. 68(b); Rej. Bif., paras. 57-59.

⁸³ Answer Bif., para. 68(c) ; Rej. Bif., paras. 60-61 (referencing CL-098, SPN PO3, para. 97).

Decision on Bifurcation to be “sound, well-reasoned, rendered by an eminent tribunal, and has persuasive value in the same way as other arbitral decisions addressed in Sauna’s Rejoinder.”⁸⁴

4. Final Comments

82. The Claimant also rejects the Respondent’s suggestion that “case management grounds” warrant bifurcation of the first two objections, pending completion of the Market Court Proceedings. This is not, the Claimant says, an argument that supports bifurcation, and the Respondent cites no authority for this.⁸⁵
83. The Claimant also states that bifurcating the preliminary objections is contrary to the overarching objective of procedural efficiency and fairness; bifurcating the proceeding in the hope of potentially achieving a five-month efficiency gain if the objections were upheld and the case disposed of fully cannot outweigh the “real risk that an unsuccessful bifurcation stage would result in a two-year delay to the proceedings.” The Claimant emphasizes that under the current procedural calendar, the hearing on jurisdiction and the merits is set down for February 2027, weighing in favor of non-bifurcation.⁸⁶

VI. THE TRIBUNAL’S ANALYSIS

84. In this part, we set out the Tribunal’s reasoning on the various elements of the Respondent’s request for bifurcation.

A. THE APPLICABLE TEST FOR BIFURCATION

85. The Respondent’s request for bifurcation relates to several preliminary objections to jurisdiction and/or competence/admissibility and therefore Rule 44 applies.
86. Rule 44 confers a broad discretion upon the Tribunal and does not create a presumption for or against bifurcation. As expressly stated in the rule, in determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, but the rule identifies three factors in particular, and it was these that the Parties principally addressed in their submissions.
87. The Tribunal is also mindful of its general duty to conduct the proceeding in a cost-effective manner, as prescribed in Rule 3(1). There is a tension between allowing bifurcation of a preliminary issue, which could shorten the proceedings if the Respondent succeeds on that issue, but will lengthen the proceedings if the Respondent fails. The Tribunal must do the best it can to reach a fair decision.
88. In some cases, if one preliminary issue is bifurcated, it could promote arbitral economy to bifurcate all preliminary issues that have been raised. For the reasons set out below, the Tribunal does not consider that approach to be appropriate in this proceeding.
89. In reaching a decision on bifurcation, the Tribunal must be careful not to prejudge the merits of the issues on which bifurcation is requested, notwithstanding the Parties’ explicit and implicit entreaties that we have regard to the prima facie strengths and weaknesses of the arguments, and inherent likelihood of success, as a factor in reaching a decision whether to bifurcate or not. It is,

⁸⁴ Surrejoinder Bif., p. 1.

⁸⁵ Answer Bif., paras. 69-70; Rej. Bif., para. 62.

⁸⁶ Answer Bif., paras. 61-62; Rej. Bif., paras. 2-4, 14-18.

however, appropriate that we satisfy ourselves that the relevant preliminary objection is not frivolous or vexatious, and is arguable, and/or is serious and substantial.

90. The Tribunal has considered the SPN Decision on Bifurcation. It is undoubtedly informative, because it is a decision in a case concerning the same facts and matters, in which the respective claimants are related. Moreover, it was made by an eminent tribunal. The tribunal in that case articulated the test and approach under Rule 44 in a similar way. Nevertheless, this Tribunal is not bound by that Decision and must base its decision on the arguments presented to it and the circumstances of this proceeding.

B. APPLICATION OF THE TEST

1. Denial of Benefits Objection

91. Article 17(1) of the ECT provides:

“Each Contracting Party reserves the right to deny the advantages of this part [III] to ... a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized ...”.

92. The Claimant issued its Notice of Dispute on 9 January 2024. The Respondent issued its DOB Notice on 15 July 2024.
93. It is common ground between the Parties that if the Respondent can make good its case on denial of benefits, it would be a complete defence in that the Claimant’s claims would be inadmissible and that would dispose of the case entirely. Accordingly, bifurcation of that preliminary objection could materially reduce the time and costs of the proceeding and this weighs in favour of bifurcation.
94. The Claimant argues that bifurcation should be refused because it will be a waste of time given that the Respondent’s denial of benefits objection is highly unlikely to succeed due to the overwhelming majority of ECT tribunals having decided that a DOB notice must be issued before a dispute has arisen, or at least before the investor has issued a notice of dispute, whereas here the Respondent’s DOB Notice was issued afterwards. Without in any way prejudging the issue, the Tribunal acknowledges that the weight of authority supports the Claimant’s position on the timing of a DOB notice, but a minority of ECT and Investor-State Dispute Settlement (“ISDS”) decisions have reached a different conclusion, such that it is arguable whether there is a *jurisprudence constante* on the issue. In any event, this Tribunal is not bound by prior decisions. The threshold test has been described using different language, but the Tribunal agrees that the test has been met, in that the DOB Objection, based on a *prima facie* review, is a serious and substantial one in the sense that it appears arguable and advanced in good faith and is not manifestly without merit, nor frivolous or vexatious.
95. In the opinion of the Tribunal, determining the denial of benefits objection should be relatively self-contained. According to the Respondent, that objection requires the Tribunal to do no more than decide a single narrow point of law (timing requirement) in the light of wholly undisputed facts. According to the Claimant, it may require factual evidence to be presented and considered relating to ownership and control of the Claimant and its business activities in the UK, as well as the timing issue. The Tribunal is not persuaded that such evidence will be closely entwined with the substantive matters relevant to breach of the ECT such as to make bifurcation unsuitable.

[REDACTED] Some overlap in and of itself is not a reason to refuse bifurcation. The denial of benefits objection in this case (which concerns

Sauna, the investor) is sufficiently legally and factually distinct from the merits (which concerns the treatment of the investment).

96. Tribunals when deciding bifurcation applications have considered the effect that allowing bifurcation would have on the timetable, such that if the objection fails the delay caused would be unpalatable. In this case, the procedural calendar issued with Procedural Order No. 1 envisaged two scenarios. Scenario 1 was if bifurcation was denied and prescribed a timetable leading to a substantive hearing on jurisdiction and merits in February 2027 (with 17 months between the Tribunal communicating its decision on bifurcation and the hearing). Scenario 2 was if bifurcation was granted (on the premise that all or most of the objections would be bifurcated) and prescribed a timetable leading to a hearing on the preliminary issues in September 2026. Should the preliminary issues fail to dispose of the case entirely, it would be likely that a hearing on the substantive merits would not take place until 2028 or later. The potential delay favours declining bifurcation.
97. The Tribunal concludes that, on balance, the potential considerable saving in time and costs in the event that the Respondent's denial of benefits objection succeeds outweighs the disadvantages of prolonging the proceeding if it fails. To address that downside, the Tribunal has already directed that bifurcation of this objection be dealt with more expeditiously than in Scenario 2 (given that it is only this objection that is being bifurcated).
98. We note that SPN Decision on Bifurcation reached a different conclusion. We observe that the tribunal in that case emphasized that the objection only concerned some but not all of the claimants, and therefore the preliminary objection, if upheld, would not dispose of all of the disputes at issue.⁸⁷ That is not the position here. (We do not mean to imply that had the position been the same in SPN as in this arbitration, the tribunal in SPN would have reached the same conclusion that we do; rather we wish to dispel any suggestion that the decisions of the two tribunals are inconsistent or contradictory.)

2. *Lis Pendens* Objection

99. The Respondent contends that its *lis pendens* objection, if successful, would mean that the Claimant's whole claim is inadmissible.
100. Even assuming that the principle of *lis pendens* (in the sense that the same parties or their privies may not advance the same causes of actions/claims in two or more arbitrations) is applicable in ISDS and under the ECT in particular (for which there is limited authority, cf. *res judicata*), deciding this issue would require the Tribunal to thoroughly examine the Claimant's claims in this arbitration compared with those in the SPN arbitration. If they are not the same, albeit they appear to be very similar, it may not dispose of the Claimant's claims in their entirety.
101. More significantly, it would require consideration of the notion of privies and the factual circumstances which might support that conclusion. That enquiry could require substantial evidence of the relationships amongst the relevant entities and could very well overlap with the evidence that will need to be investigated in the merits phase.
102. Should the Tribunal grant bifurcation of this objection, the Scenario 2 timetable would be appropriate, and if the Respondent was ultimately unsuccessful, it would prolong the proceeding considerably.

⁸⁷ SPN PO3, para. 93.

103. Some tribunals have decided that in the event that they allow bifurcation of one preliminary objection, it would contribute to arbitral efficiency to then allow bifurcation of any other objections to be decided according to the same timetable. That approach is not applicable here, because: (i) the Tribunal concludes that the facts going to the *lis pendens* objection are likely interlinked with the merits; and (ii) the Tribunal can shorten the Scenario 2 timetable if only the denial of benefits objection is bifurcated.
104. The Tribunal concludes that, on balance, the Respondent's *lis pendens* objection is unsuitable for bifurcation.

3. Abuse of Process Objection

105. The Respondent contends that its abuse of process objection, if successful, could mean that the Claimant's whole claim is inadmissible.
106. Even assuming that the principle of abuse of process (in the sense that the same parties or their privies should not be allowed to advance the same causes of actions / claims in two or more arbitrations, because this constitutes a misuse of a procedural right) is applicable in ISDS and under the ECT in particular (for which there is limited authority), the same considerations apply as for the *lis pendens* objection.
107. The Tribunal would have to consider the claims of each of the claimants in the respective proceedings, and if they are not the same, a ruling in favour of the Respondent in respect some of the claims may not dispose of the Claimant's claims in their entirety. Further, this objection would require a factual enquiry that would overlap with the merits. Moreover, it would run the risk of prolonging the proceeding.
108. The Tribunal concludes that, on balance, the Respondent's abuse of process objection is unsuitable for bifurcation.

4. Fork-in the-Road Objection

109. Article 26(3) of the ECT, read together with Annex ID, provides that Finland does not give unconditional consent to the submission of a dispute to international arbitration under the ECT where the Investor has previously submitted the dispute to the courts or administrative tribunals of Finland. The Respondent asserts that a privy of the Claimant, Caruna, is presently pursuing the same relief from Finnish courts.
110. The Respondent contends that its fork-in-the-road objection, if successful, would mean that the Tribunal lacks jurisdiction or the Claimant's claim is inadmissible in its entirety.
111. Deciding this issue would require the Tribunal to thoroughly examine the Claimant's claims in this arbitration compared with those of Caruna in the Finnish Market Court to decide if they are the same dispute. If the claims in the respective proceedings are not the same, and we note that the claims before the Finnish Market Court are to be decided pursuant to domestic Finnish law while the claims in this arbitration are to be decided pursuant to the ECT and international law, it may not dispose of the Claimant's claims in their entirety.
112. In addition, it would require consideration of the notion of privies and the factual circumstances which might support that conclusion. That enquiry could require substantial evidence of the relationship between the Claimant and Caruna and could very well overlap with the evidence that will need to be investigated in the merits phase.

113. Further, it would likely require examination of the evidence presented in the Finnish Market Court proceedings, which again could very well overlap with the evidence that will need to be investigated in the merits phase of this arbitration.
114. Should the Tribunal grant bifurcation of this objection, the Scenario 2 timetable would be appropriate, and if the Respondent was ultimately unsuccessful, it would prolong the proceeding considerably. It would not contribute to arbitral efficiency to decide this objection together with the denial of benefits objection.
115. The Tribunal concludes that, on balance, the Respondent's fork-in-the-road objection is unsuitable for bifurcation.
116. We note that SPN Decision on Bifurcation reached the same conclusion. We observe that the tribunal in that case held that in order to for it to rule upon the two objections (fork-in-the-road and inadmissibility) it would be required to investigate, *inter alia*, the scope of claimants' claims for breach of the ECT in that arbitration and to determine the degree of overlap with, or independence from, the claims commenced by Caruna before the Finnish Market Court under Finnish administrative law (para. 95).

5. Inadmissability Objection

117. The Respondent contends that its inadmissibility objection, if successful, would mean that the Claimant's whole claim is inadmissible.
118. The Respondent's objection is to the effect that this Tribunal cannot assess the totality of Finland's conduct until a final decision of the Finnish court has been rendered and, as such, the Claimant's claim is premature and must be dismissed as inadmissible.
119. Even assuming that the proposition that a tribunal can declare that a claim is inadmissible because of prematurity is applicable in ISDS and under the ECT in particular (for which there is limited authority, cf. finding that no cause of action has arisen and therefore manifestly lacking legal merit), the same considerations apply as for the fork-in-the-road objection.
120. The Tribunal would have to consider the claims of each of the claimants in the respective proceedings, and if they are not the same, a ruling in favour of the Respondent in respect of some of the claims may not dispose of the Claimant's claims in their entirety. Further, this objection would require a factual enquiry that would overlap with the merits. Moreover, it would run the risk of prolonging the proceeding.
121. Further, it would require examination of whether the outcome in the Finnish Market Court could affect the issues in this arbitration, at a time when the Respondent had not yet filed its Counter-Memorial.
122. The Tribunal concludes that, on balance, the Respondent's inadmissibility objection is unsuitable for bifurcation.
123. We note that SPN Decision on Bifurcation reached the same conclusion, on the basis that the merits would necessarily be engaged (para. 97).
124. The Respondent further argues that, in any event, it would be more efficient to defer any consideration of the merits until the conclusion of the Finnish court proceedings, as a matter of case management. The Tribunal is not prepared to consider making such an order at the present time, before the Respondent has filed its Counter-Memorial and the issues in dispute have been delineated.

C. TIMETABLE

125. The Tribunal has already provided directions for a briefing schedule on the denial of benefits objection on 10 October 2025, and agreed to the Parties' proposed amendments to this on 4 November 2025. The procedural calendar is contained in **Annex A hereto**.

D. COSTS

126. Both the Claimant and the Respondent requested an order of costs.
127. The Tribunal does not consider any of the Respondent's objections to have been frivolous or vexatious, or unarguable, or lacking seriousness. Both sides have been partly successful. The Tribunal prefers to reserve the question of costs such that the costs incurred in relation to the Respondent's application for bifurcation are costs in the arbitration, to be determined and allocated at such time as directed by the Tribunal.

VII. DECISION

128. On the basis of the foregoing, the Tribunal makes the following decisions:

- i. The Respondent's Request for Bifurcation is granted in part:
 - a) The Respondent's denial of benefits objection to be heard in a preliminary phase;
 - b) The remaining objections are joined to the merits;
- ii. The procedural calendar for determination of the denial of benefits objection shall be in accordance with that set out in Annex A; and
- iii. Costs of the Request for Bifurcation incurred by either party shall be costs in the arbitration.

On behalf of the Tribunal,

[Signed]

Audley Sheppard KC
President of the Tribunal
Date: 10 November 2025

Annex A

Event	Date
Memorial on DoB	(Filed on 6 October 2025)
C-Memorial on DOB	(+ 3 weeks 2 days) 29 October 2025
Doc Prod. Requests	(+ 2 weeks) 12 November 2025
Objections to Doc Pro. Requests	(+3 (business) days) 17 November 2025
Replies for Rulings on Doc Pro.	(+3 days) 20 November 2025
Rulings on Doc. Pro.	(+3 (business) days) 25 November 2025
Production of Docs.	(+4 (business) days) 1 December 2025
Reply on DOB	(+ 4 weeks) 22 December 2025
Rejoinder on DOB	(+4 weeks (+1 week holidays) 26 January 2026
Witness notification	(+1 week) 2 February 2026
CMC on Hearing Org	TBC
Hearing Bundle	12 February 2026
Hearing (in London)	19 February 2026 (with 20 February 2026 in reserve)

If the Tribunal dismisses the denial of benefits objection, the remainder of the Procedural Timetable will be determined at that stage.