

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

**JOSHUA DEAN NELSON, IN HIS OWN RIGHT AND ON BEHALF OF TELE FÁCIL
MÉXICO, S.A. DE C.V.**

(“Claimant”)

and

THE UNITED MEXICAN STATES

(“Respondent”)

ICSID Case No. UNCT/17/1

PROCEDURAL ORDER NO. 16

Tribunal

Dr. Eduardo Zuleta (President)
Mr. V.V. Veeder, QC (Arbitrator)
Mr. Mariano Gomezperalta Casali (Arbitrator)

Secretary of the Tribunal

Ms. Sara Marzal Yetano

24 July 2019

I. Procedural history

1. On 9 July 2019 the Tribunal issued Procedural Order 15 which, *inter alia*, provided that (a) if Claimant intended to present arguments and evidence on Mr. Blanco's bankruptcy not in the evidential record at the time of issuance of Procedural Order No. 14, the Parties had to confer and agree on a new procedural calendar by 22 July 2019; and (b) if Claimant did not intend to submit arguments and evidence on Mr. Blanco's bankruptcy, the procedural calendar determined by the Tribunal in Procedural Order No. 14 would be maintained.
2. On 15 July 2019 Claimant informed the Tribunal and Respondent about its intention "to submit arguments and evidence on Mr. Blanco's bankruptcy not in the evidential record at the time of issuance of Procedural Order No. 14."
3. On 16 July 2019 Claimant reported areas of agreement and disagreement between the Parties and requested the Tribunal's intervention to resolve the disagreements. As reported by Claimant, the parties disagreed on the following:
 - a. The permissible scope of Claimant's submission of 15 August 2019 and the scope of evidence on which Claimant may rely in response to Respondent's arguments regarding the share transfer and *de facto* control issues;
 - b. The appropriate timeline for submission of the Parties' respective submissions.
4. On 19 July 2019 Respondent submitted its comments on Claimant's report of 16 July 2019.

II. Considerations of the Tribunal

5. From the Parties' submissions, the Tribunal understands that the Parties basically agree that:
 - a. Claimant may be allowed to present new evidence with respect to the bankruptcy order dated 29 May 2019, issued by the Judge for the United States Bankruptcy Court for the Southern District of Florida and related to Mr. Blanco ("Bankruptcy Order"). Therefore, with respect to the Bankruptcy Order Claimant may present documents related thereto that are not in the record of this arbitration and that have not been previously produced in this arbitration, together with expert reports and any legal authority related to the Bankruptcy Order.
 - b. With respect to the alleged *de facto* control by Mr. Nelson ("De Facto Control") and the alleged transfer of shares from Mr. Sacasa and Mr. Blanco to Mr. Nelson, ("Share Transfer") the Parties agree that Claimant's submission of 15 August 2019 may address these two issues and may introduce as evidence documents previously produced in this arbitration but not yet in the record, as well as expert reports based on the evidentiary record existing at the time Procedural Order No. 14 was issued.
 - c. The Parties also agree that after the 15 August 2019 submission by Claimant, Respondent will have the right to amend its jurisdictional objection to address the Bankruptcy Order, the De Facto Control and the Share Transfer issues and that thereafter Claimant will have the right to respond to the amended jurisdictional objection.

6. The Parties differ, however, on the timing for the submission of the amended jurisdictional objection. Claimant considers that Respondent should be granted a term of four weeks to present the amended jurisdictional objection. Respondent considers that it needs eight weeks to submit the amended jurisdictional objection. Respondent's position is that it may require an additional expert report to respond to Claimant's submission of 15 August 2019 and the four-week deadline proposed by Claimant is not enough to carry out all necessary activities to get an expert report and prepare the corresponding submission. Respondent further notes that the Tribunal granted Claimant a nine-week deadline to reply to Respondent's objection on jurisdiction, which is an indication that eight weeks are reasonable in this case. Respondent also stressed on the fact that it is not possible to start preparing an expert report before 15 August 2019.
7. The Tribunal agrees with Respondent on the proposed timeline. *First*, Claimant had nine weeks to prepare its submission of 15 August 2019. Therefore, Respondent deserves at least a similar period of time to prepare its amendment on the objection on jurisdiction. *Second*, the need for new submissions and the resulting amendment to jurisdictional objections results from acts and omissions of Mr. Blanco and not of Respondent. *Third*, Respondent could not be required to start preparing an amendment to the jurisdictional objection and to obtain expert reports on the Bankruptcy Order, the De Facto Control and the Share Transfer issues without having received the complete submission of Claimant on 15 August 2019.

V. Decision of the Tribunal

8. Based on the above the Tribunal decides:
 - a. That Claimant may, no later than 15 August 2019:
 - i. Submit new arguments and evidence regarding the Bankruptcy Order.
 - ii. Submit, in connection with the De Facto Control and the Transfer of Shares, factual documents that were previously produced in this arbitration, though not submitted as exhibits into the record of this arbitration, and expert reports as well as legal authorities on the matter, provided that they are based on the evidentiary record existing at the time Procedural Order No. 14 was issued.
 - b. That Respondent may, no later than 19 October 2019:
 - i. Submit new arguments and evidence regarding the Bankruptcy Order in response to Claimant's submission of August 15, 2019.
 - ii. Amend its jurisdictional objections to (i) include the Bankruptcy Order and submit new arguments and evidence regarding the Bankruptcy Order; and (ii) address the De Facto Control and the Share Transfer and introduce in connection therewith factual documents that were previously produced in this arbitration, though not submitted into the record of this arbitration, and expert reports as well as legal authorities, provided that they are based on the evidentiary record existing at the time Procedural Order No. 14 was issued.
 - c. That Claimant may submit its response to the amended objections on jurisdiction no later than 8 December 2019.

- d. No new arguments or evidence not related to the above issues may be submitted without the previous authorization from the Tribunal.

On behalf of the Tribunal,

[*Signed*]

Dr. Eduardo Zuleta
Presiding Arbitrator
Date: 24 July 2019