

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Pawlowski AG and Projekt Sever s.r.o.

v.

Czech Republic

(ICSID Case No. ARB/17/11)

PROCEDURAL ORDER NO. 4

HEARING ORGANIZATION

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Mr. John Beechey, CBE, Arbitrator

Prof. Vaughan Lowe, QC, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Ms. Krystle Baptista

6 January 2020

I. INTRODUCTION

1. In accordance with paragraph 21 of Procedural Order No. 1 (“PO1”), on 16 December 2019, the President of the Tribunal held a pre-hearing conference call with the Parties to discuss the organization of the oral hearing on jurisdiction, merits and quantum (the “Hearing”). The following persons joined the teleconference:

On behalf of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Ms. Krystle Baptista, Assistant to the Tribunal

ICSID Secretariat

Ms. Lindsay Gastrell

Claimants

Sebastian Pawlowski, Pawlowski AG

Felix Dasser, Homburger AG

Kirstin Dodge, Homburger AG

Marc Bircher, Homburger AG

Nicole Cleis, Homburger AG

Jan Havlíček, Havlíček Law Offices

Respondent

Erica Stein, Dechert LLP

Anna Bilanova, Ministry of Finance of the Czech Republic

2. During the teleconference, the President of the Tribunal and the Parties addressed the items set out in a draft of this Order. Taking into account the Parties’ views and the provisions of PO1, the Tribunal issues the present Order.

II. LOGISTICAL ARRANGEMENTS

A. Venue

3. The Hearing will be held in Room A of the World Bank Office in Paris, located at 66 Avenue d’Iéna, 75116.

B. Other Arrangements

4. The ICSID Secretariat, in consultation with the Parties and the Tribunal, will make the necessary logistical arrangements, including the designation of the Parties' breakout rooms, set-up details, list of participants, transcription, recording, other technology, catering, etc.

III. HEARING SCHEDULE AND ALLOCATION OF TIME

5. The Hearing will be held from Sunday 26 to Thursday 30 January 2020.

A. Daily Schedule

6. On each Hearing day, the following schedule will apply:
 - Start: 9:00 a.m.
 - Breaks: one morning, one afternoon, 15 minutes each
 - Lunch: 1 hour, around 1:00 p.m.
 - End: 6:00 p.m.

7. The Tribunal may amend this schedule if necessary.

B. Allocation of Time

8. The Parties shall be allocated an equal amount of Hearing time.
9. The time allotted to the Parties does not include breaks (30 minutes per day), lunch (1 hour per day), and Tribunal time (estimated 10.5 hours). Each Party shall have a total of 13.5 hours.
10. Time incurred by the Tribunal's questions shall be for the account of the Tribunal and not that of either Party.
11. The Secretary of the Tribunal will maintain Hearing time using the chess-clock method, and report the time used and remaining to the Parties and the Tribunal after each day of the Hearing. Any disagreement between the Parties concerning Hearing time shall be dealt

with outside sitting hours whenever possible and referred to the Tribunal only as a last resort.

C. Hearing Timetable

12. The Provisional Hearing Schedule is included as Annex A. It is not intended to specify the precise times to be used for examination of particular witnesses, but rather to allocate the hearing time for planning purposes. It is understood that the Parties' examination of the quantum experts may run over into the afternoon of Thursday 30 January 2020, which is allocated in the Provisional Hearing Schedule as Tribunal time.
13. Witnesses should be made available half a day before and after the time slot in which they are estimated to be examined according to the Provisional Hearing Schedule.

IV. ORAL ARGUMENTS

14. Each Party may use a maximum of 2.5 hours of its Hearing time to make an Opening Statement.
15. There will be no Closing Statements.

V. WITNESSES AND EXPERTS

A. Appearance of Witnesses and Experts

16. On 11 December 2019, each Party notified the other Party and the Tribunal which of the witnesses and experts of the opposing Party it wishes to cross-examine at the Hearing.
17. The Claimants have called for cross-examination the following witnesses and experts of the Respondent:

Witnesses:

- Ondrěj Boháč
- Tomáš Hudeček
- Silvie Štěpánková
- Matěj Stropnický
- Věra Topičová

Experts:

- JUDr. Stanislav Kadeřka, Ph.D.
- Fernando Cuñado Garcia-Bernalt or Jiff Urban of KPMG.

18. The Respondent has called for cross-examination the following witnesses and experts of the Claimants:

Witnesses

- Mr. Sebastian Pawlowski
- Mr. Martin Langmajer
- Mr. Marek Tichy
- Mr. Milan Coller
- Mr. Martin Turnovský
- Mr. Bořek Votava
- Mr. František Nováček
- Mr. Jaroslav Malčánek
- Mr. Robert Zugar.

Experts:

- Prof. Veronika Tomoszková
- Mr. Kai F. Schumacher

19. On 17 December 2019, each Party notified the other Party, with a copy to the Tribunal, of the order in which it will present its fact witnesses.
20. If a Party wishes to waive its right to cross-examine a witness or expert, that Party will notify the other Party and the Tribunal before the witness has travelled to the Hearing.
21. The facts included in the statement of a witness, who has not been called for cross-examination will not be considered established due to the mere fact that the witness was not called for cross-examination. Unless the Tribunal decides that the witness should be heard at the Hearing, the Tribunal will evaluate the weight of the witness' evidence, taking into account the entire record and all other relevant circumstances.
22. Each Party shall be responsible for the appearance of its own witnesses and experts at the Hearing. The Tribunal may disregard the testimony of a witness or expert called to testify at the Hearing, who fails to appear at the Hearing without justified reasons. Examination

by video-conference may be permitted in exceptional circumstances for justified reasons at the discretion of the Tribunal.

B. Examination of Witnesses and Experts

23. Before testifying, each witness shall make the declaration contained in ICSID Arbitration Rule 35(2), and each expert shall make the declaration contained in ICSID Arbitration Rule 35(3).
24. Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the oral procedure.
25. A witness' statement(s) or an expert's report(s) shall constitute that witness' or expert's evidence by way of direct examination. However, the Party presenting the witness may conduct a brief direct examination at the Hearing. Experts may summarize their reports and findings, either through direct examination or in the form of a brief presentation not exceeding 45 minutes. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.
26. As a general rule the scope of cross-examination will be limited to the contents of the witness statement(s) or expert report(s). Re-direct examination shall as a general rule be limited to the subject of cross-examination. At the request of any party and for good cause, the Tribunal may expand the scope of the cross-examination or the re-direct examination.

C. Sequestration of Witnesses

27. All fact witnesses will be sequestered before giving their testimony, except Mr. Pawlowski, who will be examined first. Experts will not be sequestered before giving their testimony.

D. Cross-Examination Bundles

28. Each Party will prepare a single cross-examination bundle for the Hearing and will provide a copy to the witnesses, each Member of the Tribunal, the Tribunal Assistant, the Secretary, the court reporter and the three interpreters. If the Party wishes to take a witness to another exhibit or authority on the record, that Party may provide a paper copy of the document or

show an electronic copy on the screen. If the document is shown on the screen, the witness will be permitted to scroll through the document and may at any time request a paper copy.

29. Neither Party may introduce a document during the examination or cross-examination of a witness or expert that is not already on the record.

VI. HEARING MATERIALS

A. Demonstrative Exhibits

30. In accordance with paragraph 17.9 of PO1, PowerPoint slides may be used for the opening statements and expert presentations at the Hearing and may contain demonstrative exhibits (e.g. graphics or charts depicting compilations of evidence in the record), provided they contain no new evidence.
31. The Parties shall indicate on each slide depicting quotations from or excerpts of exhibits in the record or containing demonstrative exhibits the exhibit number(s) of the document(s) where they are found or from which they are derived.
32. An electronic copy of demonstrative exhibits shall be provided to the other Party via e-mail by 8:00 p.m. the evening before the presentation in which the demonstrative exhibit is found.
33. Immediately before giving a presentation at the Hearing, the Parties shall hand out a hard copy of the presentation and shall send an electronic copy by e-mail to the other Party, each Member of the Tribunal, the Secretary, the Assistant, the court reporter and the interpreters (the latter, as necessary).

B. Tribunal Materials

34. The President does not require any hard copies for the Hearing and will work from his own electronic copy of the case file.
35. Mr. Beechey would like to have hard copies (in A5, double-sided and spiral bound in soft covers) of the principal submissions, witness statements and expert reports only.

36. Prof. Lowe would like to have hard copies (in A5) of the witness statements and expert reports only.
37. Both Mr. Beechey and Prof. Lowe would ideally like to have a joint consolidated hyperlinked index of the full case file, but they can manage with the separate hyperlinked indices from each Party if that will save significant effort and cost.

C. Additional Evidence

38. No new evidence or authorities may be submitted at the Hearing, except upon an application granted by the Tribunal. The rules regarding the submission of additional documents and new evidence/exhibits are provided by paragraph 17.4 of PO1, which states:

17.4. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

17.4.1 Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

17.4.2 If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

VII. TRANSPARENCY

39. The Parties agree that no part of the Hearing will be made public.

VIII. INTERPRETATION

40. The language of this arbitration is English.¹ The Parties have indicated that 13 witnesses require interpretation. The Tribunal has decided that simultaneous interpretation will be required. The Parties have agreed to secure the interpretation services of Ms. Martina Graffova, Ms. Dalila Graffova and Dr. Dominika Winterová on 27, 28 and 29 January 2020.

IX. RECORDS OF THE HEARING

41. Real time court reporting services are to be provided by Ms. Diana Burden, with same-day transcript delivery to the Tribunal and the Parties via email.
42. An audio recording of the Hearing will be made, and the Secretary will provide the Parties and the Tribunal with access to the audio file following the Hearing.
43. The Parties shall attempt to agree on any corrections to the transcripts within 30 days after the close of the Hearing. The Tribunal shall decide upon any disagreement between the Parties relating to the transcript corrections. The corrections agreed by the Parties or adopted by the Tribunal shall be entered by the court reporter in the transcripts.

X. POST-HEARING MATTERS

A. Post-Hearing Submissions

44. The Parties will file post-hearing submissions. The Parties and the Tribunal will discuss the form and timing of these submissions at the close of the Hearing.

¹ Para. 12.1 of Procedural Order No. 1.

B. Cost Submissions

45. Before the close of the Hearing, the Parties and the Tribunal will discuss when and in what form the Parties will file evidence regarding the quantification/allocation of the costs of arbitration.

On behalf of the Tribunal,

[signed]

Prof. Juan Fernández-Armesto
President of the Tribunal
Date: 6 January 2020

ANNEX A: AGREED PROVISIONAL HEARING SCHEDULE

	SUNDAY 26 January 2020	MONDAY 27 January 2020	TUESDAY 28 January 2020	WEDNESDAY 29 January 2020	THURSDAY 30 January 2020
SESSION 1 09:00 – 11:00 (2h)	<ul style="list-style-type: none"> • Introductions • Claimants' Opening Statement (est. 1.5 hours) 	<ul style="list-style-type: none"> • Claimants' Fact Witness 2 (Coller) • Claimants' Fact Witness 3 (Zugar) 	<ul style="list-style-type: none"> • Respondent's Fact Witness 1 (Boháč) 	<ul style="list-style-type: none"> • Respondent's Fact Witness 5 (Hudeček) 	<ul style="list-style-type: none"> • Claimants' quantum expert (Schumacher)
BREAK					
SESSION 2 11:15 – 13:00 (1:45h)	<ul style="list-style-type: none"> • Respondent's Opening Statement (est. 2.5 hours) 	<ul style="list-style-type: none"> • Claimants' Fact Witness 4 (Langmajer) • Claimants' Fact Witness 5 (Votava) 	<ul style="list-style-type: none"> • Respondent's Fact Witness 2 (Štěpánková) 	<ul style="list-style-type: none"> • RESERVE for Respondent's Fact Witnesses 	<ul style="list-style-type: none"> • Respondent's quantum expert (Garcia-Bernalt (in lead) / Urban)
LUNCH (60 min)					
SESSION 3 2:00pm – 4:00pm (2h)	<ul style="list-style-type: none"> • Respondent's Opening Statement (cont.) • Claimants' Fact Witness 1 (Pawlowski) 	<ul style="list-style-type: none"> • Claimants' Fact Witness 6 (Nováček) • Claimants' Fact Witness 7 (Tichý) 	<ul style="list-style-type: none"> • Respondent's Fact Witness 3 (Topičová) 	<ul style="list-style-type: none"> • Claimants' legal expert presentation (Tomoszková) • Respondent's legal expert presentation (Kadečka) • Legal expert witness conferencing 	<ul style="list-style-type: none"> • Quantum expert witness conferencing?
BREAK					
SESSION 4 4:15pm – 6:00pm (1:45h)	<ul style="list-style-type: none"> • Claimants' Fact Witness 1 (Pawlowski) 	<ul style="list-style-type: none"> • Claimants' Fact Witness 8 (Malčánek) • Claimants' Fact Witness 9 (Turnovský) 	<ul style="list-style-type: none"> • Respondent's Fact Witness 4 (Stropnický) 	<ul style="list-style-type: none"> • Legal expert witness conferencing and follow-up cross-examination 	RESERVE