

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Nasib Hasanov**

**v.**

**Georgia**

**(ICSID Case No. ARB/20/44)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Mr. Laurence Shore, President of the Tribunal  
Professor Stanimir Alexandrov, Arbitrator  
Mr. J. William Rowley QC, Arbitrator

***Secretary of the Tribunal***

Ms. Celeste E. Mowatt

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March 26, 2021

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**Introduction**

The first session of the Tribunal was held on March 19, 2021, 9 am EDT by videoconference.

An audio recording and transcript of the session were made and deposited in the archives of ICSID. The recording and transcript were distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Mr. Laurence Shore, President of the Tribunal  
Prof. Stanimir Alexandrov, Arbitrator  
Mr. J. William Rowley QC, Arbitrator

ICSID Secretariat:

Ms. Celeste E. Mowatt, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Michael Ostrove, DLA Piper France  
Ms. Kate Cervantes-Knox, DLA Piper France  
Ms. Séréna Salem, DLA Piper France  
Mr. Angus Eames, DLA Piper UK  
Mr. Victor Croci, DLA Piper UK  
Mr. Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan UK  
Mr. Jagdish Menezes, Quinn Emanuel Urquhart & Sullivan UK  
Mr. Vano Gogelia, PWC Georgia  
Mr. Teymur Taghiyev, Director, Nelgado Ltd

Participating on behalf of the Respondent:

Ms. Claudia Annacker, Dechert (Paris) LLP  
Mr. Eduardo Silva Romero, Dechert (Paris) LLP  
Ms. Erica Stein, Dechert LLP  
Ms. Ruxandra Esanu, Dechert (Paris) LLP  
Mr. Panos Theodoropoulos, Dechert (Paris) LLP  
Mr. Hayk Kupelyants, Dechert LLP  
Ms. Mariam Gotsiridze, Ministry of Justice of Georgia  
Ms. Ana Goglidze, Ministry of Justice of Georgia

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on March 2, 2021; and

- The parties' comments on the Draft Procedural Order received on March 16, 2021.

Following the first session, the Tribunal now issues the present Order:

### **Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The procedural calendar is attached as Annex A.

#### 1. Applicable Arbitration Rules

*Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

#### 2. Constitution of the Tribunal and Tribunal Members' Declarations

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on February 18, 2021, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on February 18, 2021.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

#### 3. Fees and Expenses of Tribunal Members

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:

- 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
    - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
  - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
  - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*
  - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*
  - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
  - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
  - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
  - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
  - 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically in the form of a letter or email.
  - 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits

*Arbitration Rule 26(1)*

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Ms. Celeste E. Mowatt, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Celeste E. Mowatt  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 458-1021  
Fax: + 1 (202) 522-2615  
Email: [cmowatt@worldbank.org](mailto:cmowatt@worldbank.org); [mpolasek@worldbank.org](mailto:mpolasek@worldbank.org)  
Paralegal name: Ekaterina Minina  
Paralegal email: [eminina@worldbank.org](mailto:eminina@worldbank.org)

- 7.3. For local messenger deliveries, the contact details are:

Ms. Celeste E. Mowatt  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
USA  
Tel. 202-458-1534

8. Representation of the Parties  
*Arbitration Rule 18*

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by promptly notifying the Tribunal and the Tribunal Secretary. The Tribunal may dismiss the additional agent, counsel or advocate if it finds that the integrity of the proceeding is affected by such addition.

For Claimant

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9. Apportionment of Costs and Advance Payments to ICSID

*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of February 22, 2021, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on March 16, 2021 and Respondent's payment on March 10, 2021.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*

- 10.1. Paris shall be the place of the proceeding and the venue for in-person hearings.
- 10.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means it considers convenient.
- 10.4. Hearings may be held by appropriate online means in light of the prevailing circumstances and after consultation with the parties.

11. Procedural Language(s), Translation and Interpretation

*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*

- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.

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- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted, simultaneously if possible (but subject to reconsideration at the Pre-Hearing Conference). In principle, a witness who wishes to testify in a language other than English shall have previously submitted (pursuant to the procedural calendar) a written statement/report in the language in which the witness will testify, accompanied by an English translation.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

*Administrative and Financial Regulation 24*

- 12.1. Each party's written communications shall be transmitted by email or other electronic means to the opposing party, to the Tribunal at the email addresses indicated below and to the Tribunal Secretary.

Mr. Laurence Shore                      [laurence.shore@belex.com](mailto:laurence.shore@belex.com)

Mr. Stanimir Alexandrov              [salexandrov@alexandrovlaw.com](mailto:salexandrov@alexandrovlaw.com)

Mr. J. William Rowley QC              [wrowley@twentyessex.com](mailto:wrowley@twentyessex.com) (with Ms. Doris Smith, assistant to Mr. Rowley, in copy: [dsmith@twentyessex.com](mailto:dsmith@twentyessex.com))

- 12.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.

- 12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal, Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation (non-hyperlinked).<sup>1</sup>
- 13.2. Within three business days after the relevant filing date of the Memorial, Counter-Memorial, Reply and Rejoinder, the Parties shall upload the pleading with all the supporting documentation and an updated index to the designated file sharing platform, Opus 2. For any other filings that require uploading documentation to Opus 2, the Parties shall carry out such upload on the same day as the filing.
- 13.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be, to the extent possible, text searchable (i.e., OCR PDF or Word).
- 13.4. All pleadings shall be accompanied by a cumulative index to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. (Please follow the naming conventions contained in Annex B).
- 13.5. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat at the address indicated at §7.2 or 7.3 above and to each Member of the Tribunal at the addresses indicated at §13.6 below a USB drive (MAC compatible) containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 13.6. The addresses of the Tribunal Members are as follows:

|  |  |   |
|--|--|---|
| Mr. Laurence Shore<br>BonelliErede<br>Via Barozzi 1<br>Milan 20122<br>Italian Republic<br>Tel. +39 02 77 11 31 | Prof. Stanimir Alexandrov<br>1501 K Street N.W.,<br>Suite C-072<br>Washington, D.C. 20005<br>USA<br>Tel. +1 202 736 8186 | Mr. J. William Rowley QC<br>Suite 900, 333 Bay Street<br>Toronto, Ontario M5H 2R2<br>Canada<br>Tel. +1 416 865 7009 |
|--|--|---|

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<sup>1</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

- 13.7. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

- 14.1. The proceedings shall consist of a written phase followed by an oral phase.
- 14.2. The schedule of the proceedings is set out in Annex A hereto.
- 14.3. During the first exchange of briefs, the parties will in principle present all the facts and legal arguments as well as all the evidence (including factual documents, legal sources, witness statements and expert reports) that they intend to rely on as support for their position in this arbitration, except for allegations of fact, legal arguments and evidence resulting from documents obtained during the document production phase, which may be submitted in the second exchange.
- 14.4. Subject to the preceding sentence, during the second exchange of each phase, the parties will in principle limit themselves to responding to the allegations of fact and legal arguments put forward by the other party during the first exchange, and produce evidence to support these responses.

15. Production of Documents

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

- 15.1. The parties shall exchange requests for production of documents, if any, simultaneously on the date set forth in the timetable in Annex A to this Procedural Order No. 1. The requests shall be made in the form of a “Redfern Schedule”, a template of which is set out at Annex C below. Such requests shall not be sent to the Tribunal or the ICSID Secretariat.
- 15.2. A Request to Produce shall contain:
  - 15.2.1. A description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist (in the case of documents maintained in electronic form, the requesting Party may, or the Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such documents in an efficient and economical manner);

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- 15.2.2. A statement as to how the documents requested are relevant to the case and material to its outcome;
- 15.2.3. A statement that the documents requested are not in the possession, custody, or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such documents; and
- 15.2.4. A statement of the reasons why the requesting Party assumes the documents requested are in the possession, custody, or control of another Party.
- 15.3. Each Party shall state its response to each request and any objections to any request on the date set forth in the timetable in Annex A to this Procedural Order No. 1.
- 15.4. The Party to whom the Request to Produce is addressed shall produce to the other Party the requested documents in its possession, custody, or control as to which it makes no objection on the date set forth in the timetable in Annex A to this Procedural Order No. 1. This date notwithstanding, the Parties will use their best efforts to voluntarily produce documents subject to this section on a rolling basis.
- 15.5. Each Party shall respond to these objections on the date set forth in the timetable in Annex A to this Procedural Order No. 1. Each Party shall provide the other Party and the Tribunal with the completed schedule (in both Word and PDF formats).
- 15.6. Documents exchanged in the course of this document production process shall not be sent simultaneously to the Tribunal, except as required under this or any subsequent Procedural Order.
- 15.7. The Tribunal shall make its best efforts to rule on the Parties' objections to any Requests to Produce on the date set forth in the timetable in Annex A to this Procedural Order No. 1. The Tribunal may be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) in relation to document production. In its consideration of document production requests, the Tribunal will not rewrite/amend requests in order to make them compliant with the requirements for production.
- 15.8. A Party shall, on the date set forth in the timetable in Annex A to this Procedural Order No. 1, produce to the other Party the documents that it has been ordered to produce by the Tribunal. Documents communicated in this way will not form part of the file unless and until the party who requested them subsequently submits them as documents in accordance with § 16 below

16. Submission of Documents

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Responsive documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. 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 special circumstances exist based on a reasoned written request followed by observations from the other party.
  - 16.3.1. 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.
  - 16.3.2. 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.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
  - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
  - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with § 16.5.4.
  - 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
  - 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in Annex B.

- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at or before the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports

*Convention Article 43(a); Arbitration Rule 24*

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness/expert.

**Witnesses statements**

- 17.4. Each witness statement must indicate the witness's name, date of birth, current address, and involvement in the case, as well as include a passport-size photo of the witness.
- 17.5. Any person can be a witness, including a party, an officer, an employee or any other representative of a party.
- 17.6. It will not be inappropriate for counsel to meet with witnesses and potential witnesses in order to establish the facts or prepare witness statements and hearings.

### **Expert reports**

- 17.7. Each expert report must indicate the name of the expert, date of birth, current address and professional occupation, instructions received for the purposes of preparing his or her report, and a statement of his or her independence from the parties, their legal advisors and the Arbitral Tribunal;
- 17.8. The Tribunal may, on its own initiative or at the request of a party, appoint one or more expert(s). The Tribunal will consult the parties on the choice, mission and conclusions of such an expert. The Tribunal may, on its own initiative or at the request of a party, take oral testimony from this or these expert(s).
- 17.9. Expert reports should be submitted in English. Expert reports written in a language other than English will be submitted with a translation into English.
- 17.10. The expert reports must be accompanied by any documents or information on which they are based, unless such documents or information have already been submitted as exhibits with the submissions of the parties, in which case a reference to these documents will be sufficient.

## 18. Examination of Witnesses and Experts

### *Arbitration Rules 35 and 36*

#### **Witnesses**

- 18.1. Each party will ensure the presence of its witnesses at the hearing, unless the other party has waived cross-examination of a witness and the Tribunal does not require that witness to appear. A witness who has not been called for cross-examination will not be heard at the hearing, unless the Tribunal makes use of its powers to that effect.
- 18.2. Facts mentioned in the witness statement which will not have been cross-examined by reason of waiver by the other party will not be considered as established by reason of the lack of cross-examination alone. Unless the Tribunal determines that the witness should be heard, it will assess the value of the written statement, taking into account the entire case and all the relevant circumstances.
- 18.3. Each party will bear the logistics and costs related to the presentation of its witness(es) and will be responsible for their availability. The Tribunal will decide on the appropriate allocation of costs in the final award.
- 18.4. On its own initiative or at the request of one of the parties, the Tribunal may order a party to produce a witness or invite to testify any person who may have knowledge of relevant facts whose testimony was not offered by the parties.

- 18.5. Where appropriate, in the event of an otherwise in-person hearing, the Tribunal may, in a discretionary but reasoned manner, allow a witness to be heard by videoconference and will give instructions to this effect.
- 18.6. The Tribunal may take into account the written statement of a witness who provides a valid reason for his absence from a hearing to which he has been summoned to appear, taking into account all the circumstances, in particular the fact that the witness was not subjected to cross-examination. If the Tribunal considers it necessary in the light of the circumstances, it may also set a new date to hear this witness. The Tribunal will determine whether to take into account the written testimony of a witness who does not appear at the hearing without providing good cause in light of the circumstances.
- 18.7. As a general rule and subject to other terms agreed at the preliminary conference call, fact witnesses will be examined before experts, and Claimant's fact witnesses and experts will be examined before Respondent's fact witnesses and experts.
- 18.8. Subject to any different agreement at the pre-hearing conference, during the hearing, the hearing of each witness will proceed as follows:
- The witness will read the statement set out in Article 35(2) of the Arbitration Rules.
  - The party presenting the witness may question him or her briefly for the purposes of asking preliminary questions, including to confirm and / or correct the written statement of that witness and (if authorized in advance by the Tribunal) to address facts that arose after the writing of this statement (“direct examination”). In principle, the direct examination will not exceed 10 minutes; and any party wishing to have more than 10 minutes for direct examination shall seek leave from the Tribunal at or before the Pre-Hearing Conference.
  - The opposing party may in turn cross-examine the witness. The cross-examination will cover the contents of the written statement of that witness, the answers given during his direct examination, and other facts of which the witness has direct knowledge and that are relevant (“cross-examination”).
  - The party who introduced the witness may question him or her again (“direct re-examination”). Direct re-examination may only concern matters arising out of the cross-examination or questions from the Tribunal.
  - Upon leave from the Tribunal, the opposing party may cross-examine the witness again on matters arising from the direct re-examination or questions from the Tribunal.
- 18.9. The Tribunal may question a witness at any time, either before, during or after questioning by one of the parties.

- 18.10. Subject to a different agreement between the parties or a different decision of the Tribunal, before his or her questioning a fact witness other than a party representative will not be permitted to be present in the hearing room (or connected to the hearing or transcription thereof remotely) during the testimony and the oral pleadings or to read the transcripts of the oral testimony or the oral pleadings.
- 18.11. The Tribunal will at all times have control over the questioning of witnesses. The Tribunal may, at its discretion, refuse to hear a witness when it appears that the facts on which he or she is going to testify are already established by other evidence or are irrelevant. It may also order that a witness be recalled for further questions. A witness will only be recalled by the Tribunal (on its own initiative or on request) if this intention is announced in time to ensure the witness's availability during the hearing.

### **Experts**

- 18.12. Each party will bear the logistics and costs related to the presentation of its experts, and will be responsible for their availability. The Tribunal will decide on the appropriate allocation of costs in the final award.
- 18.13. Before testifying orally, the expert will read the statement set out in Article 35(3) of the Arbitration Rules.
- 18.14. After consultation with the parties, the Tribunal may ask the non-legal experts to make a presentation not exceeding thirty minutes summarizing their methodology and conclusions by way of or in addition to a brief direct examination.

### **19. Pre-Hearing Organizational Meetings**

#### *Arbitration Rule 13*

- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings

*Arbitration Rules 20(1)(e) and 32*

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the parties.
- 20.3. The procedural calendar in Annex A provides for a hearing on the bifurcated issue to be held on May 12, 2021 (by videoconference) and for a final hearing to be held during the week of August 15, 2022, in Paris.
- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. In principle, each party will be allocated equal time to question witnesses and experts at the hearing, subject to adjustments if fundamental procedural principles so require. The parties may request short extensions of the allotted time if necessary, with the Tribunal having a reasonable margin of flexibility in this regard.
- 20.6. In the interest of transparency, hearings shall be made available to the public by a method proposed by the Secretariat and agreed by the Tribunal after consultation with the parties. Where there is a need to protect confidential information or the integrity of the arbitral process, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.
- 20.7. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:
  - 20.7.1. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
  - 20.7.2. A list of the substantive issues required to be determined by the Tribunal.
- 20.8. Exhibits presented to the Tribunal, witnesses or experts during the course of the hearing shall be presented on the Opus 2 follow presenter function.

21. Records of Hearings and Sessions

*Arbitration Rules 13 and 20(1)(g)*

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

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- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the final transcripts.

22. Post-Hearing Memorials and Statements of Costs

*Convention Article 44; Arbitration Rule 28(2)*

- 22.1. At the end of the hearing, the Tribunal will decide, after consulting with the parties, whether there is a need for post-hearing briefs. If necessary, the tribunal will set the deadlines and give any useful instructions concerning the length and the subjects to be discussed. In principle, and unless authorized by the Tribunal, post-hearing briefs will not be accompanied by new factual documents.
- 22.2. At the same time, the Tribunal will give any useful instructions on the statements of costs.

23. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

- 23.1 The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding, subject to: (i) redacting confidential information; and (ii) restraining or delaying the publication of information where such publication would jeopardize the integrity of the arbitral process.

24. Claimant’s Provisional Measures Request

- 24.1. Claimant’s Request for Arbitration (October 19, 2020) contained a request for provisional measures. Respondent submitted observations in opposition to Claimant’s request dated December 21, 2020. Claimant’s response in support of its provisional measures application was filed January 21, 2021. Respondent’s reply to Claimant’s response was filed February 5, 2021.
- 24.2. The draft agenda for the first session transmitted to the parties on March 2, 2021,

allocated time for each party to make submissions on the provisional measures request. On March 17, 2021, Respondent notified the Tribunal of factual developments related to the provisional measures request and asked that submissions on provisional measures be postponed. Claimant replied on March 18, 2021, and stated that, in light of the developments, it accepted postponement of its provisional measures application *sine die*.

- 24.3. During the first session, each party had an opportunity to make opening remarks further to Claimant's request in its letter of March 18, 2021, for an opportunity to review the recent developments with the Tribunal.

25. Respondent's Request for Bifurcation

- 25.1. Respondent submitted a bifurcation application dated February 24, 2021, to have its 'Inter-State Negotiation Objection' heard as a preliminary issue. Claimant filed its observations in response on March 8, 2021. The Tribunal heard oral submissions from the parties on Respondent's application at the first session.
- 25.2. The Tribunal deliberated following the first session and communicated its decision (with reasons to follow) on the bifurcation request to the parties by ICSID's letter of March 19, 2021. The Tribunal's decision will be formally issued in Procedural Order No. 2.

[signed]

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Laurence Shore  
President of the Tribunal  
Date: March 26, 2021

ANNEX A

**PROCEDURAL CALENDAR**

| <b>No.</b> | <b>Description</b>                              | <b>Party/Tribunal</b> | <b>Date</b>                   |
|------------|---|-----------------------|-------------------------------|
| 1.         | Respondent's submission on bifurcated issue     | Respondent            | 6 April 2021                  |
| 2.         | Claimant's submission on bifurcated issue]      | Claimant              | 23 April 2021                 |
| 3.         | Hearing of bifurcated issue                     | All                   | 12 May 2021                   |
| 4.         | Decision on bifurcated issue                    | Tribunal              | To be determined <sup>2</sup> |
| 5.         | Memorial  | Claimant              | 1 July 2021                   |
| 6.         | Counter-Memorial                                | Respondent            | 4 November 2021               |
| 7.         | Requests for Document Production                | Claimant/Respondent   | 18 November 2021              |
| 8.         | Objections to Document Production               | Claimant/Respondent   | 2 December 2021               |
| 9.         | Replies on Document Production                  | Claimant/Respondent   | 16 December 2021              |
| 10.        | Latest Date for Voluntary Document Production   | Claimant/Respondent   | 22 December 2021              |
| 11.        | Decision on Production of Documents             | Tribunal              | 6 January 2022                |
| 12.        | Latest Date for Production of Ordered Documents | Claimant/Respondent   | 27 January 2022               |
| 13.        | Statement of Reply                              | Claimant              | 17 February 2022              |
| 14.        | Statement of Rejoinder                          | Respondent            | 12 May 2022                   |

<sup>2</sup> The Tribunal will endeavour to decide the bifurcated issue promptly following the 12 May hearing. The Parties indicated during the first session that they are content to receive an indication of the Tribunal's decision on the bifurcated issue, with the Tribunal's reasons to follow shortly thereafter.

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|     |   |                     |   |
|-----|---|---------------------|---|
| 15. | Identification of experts and witnesses to be cross-examined; Draft hearing schedule to be agreed or parties' respective positions on hearing schedule to be submitted to Tribunal. | Claimant/Respondent | 26 May 2022   |
| 16. | Pre-Hearing Conference  | All                 | To be determined  |
| 17. | Submission of Demonstratives for Hearing  | Claimant/Respondent | 24 hours before the hearing   |
| 18. | Hearing (to be held in Paris)   | All                 | 15-19 August 2022 with 20 & 21 August held in reserve<br><br>(pending confirmation from the parties regarding their availability) |

ANNEX B

**ELECTRONIC FILE NAMING GUIDELINES**

Please follow these guidelines when naming electronic files and for the accompanying index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both in the name used to identify each individual electronic file and the consolidated index (which shall be attached to each submission). The parties will discuss with Opus 2 the possibility of providing a consolidated hyperlinked index with each submission.

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

| SUBMISSION TYPE                                  | ELECTRONIC FILE NAMING GUIDELINES   |
|--|---|
| <b>MAIN PLEADINGS</b>                            | <b>Title of Pleading–LANGUAGE</b>   |
|  | <i>Memorial on Jurisdiction-FR</i>  |
|  | <i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>            |
|  | <i>Reply on Annulment-FR</i>  |
|  | <i>Rejoinder on Quantum-ENG</i>   |
| <b>SUPPORTING DOCUMENTATION</b><br><br>Exhibits  | <b>C-####–LANGUAGE</b>  |
|  | <b>R-####–LANGUAGE</b>  |
|  | To be produced sequentially throughout the case.                                  |
|  | <b>CLAIMANT’S FACTUAL EXHIBITS</b>  |
|  | <i>C-0001-ENG</i>   |
|  | <i>C-0002-SPA</i>   |
|  | <b>RESPONDENT’S FACTUAL EXHIBITS</b>  |
|  | <i>R-0001-FR</i>  |
|  | <i>R-0002-SPA</i>   |
|  | Legal Authorities   |
| <b>RL-####–LANGUAGE</b>                          |   |
| To be produced sequentially throughout the case. |   |
| <b>CLAIMANT’S LEGAL AUTHORITIES</b>              |   |
| <i>CL-0001-ENG</i>                               |   |
| <i>CL-0002-FR</i>                                |   |
| <b>RESPONDENT’S LEGAL AUTHORITIES</b>            |   |
| <i>RL-0001-SPA</i>                               |   |
| <i>RL-0002-ENG</i>                               |   |
| Witness Statements                               | <b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>              |
|  | <i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>                 |
|  | <i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i> |
| Expert Reports                                   | <b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>              |
|  | <i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>                |
|  | <i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>   |

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|  |  |
|--|--|
| Legal Opinions   | <b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>            |
|  | <i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>           |
|  | <i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i> |
| Exhibits to Expert Reports, Legal Opinions             | <b>EXPERT INITIALS-###</b>   |
|  | <i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>            |
|  | <i>TK-0001</i>   |
|  | <i>TK-0002</i>   |
|  | <i>For exhibits filed with the Expert Report of [Lucia Smith]</i>          |
|  | <i>LS-0001</i>   |
| INDICES  | <b>Consolidated Hyperlinked Index</b>                                      |
|  | <b>Index of Exhibits-C-#### to C-####</b>                                  |
|  | <i>Index of Exhibits-C-0001 to C-0023</i>                                  |
|  | <b>Index of Legal Authorities-RLA-### to RLA-###</b>                       |
|  | <i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>                     |
| OTHER APPLICATIONS                                     | <b>Name of Application-[Party]-LANGUAGE</b>                                |
|  | <i>Preliminary Objections under Rule 41(5)-SPA</i>                         |
|  | <i>Request for Bifurcation-ENG</i>   |
|  | <i>Request for Provisional Measures-[Respondent]-SPA</i>                   |
|  | <i>Request for Production of Documents-[Claimant]-SPA</i>                  |
|  | <i>Request for Stay of Enforcement-FR</i>                                  |
|  | <i>Request for Discontinuance-[Claimant]-ENG</i>                           |
|  | <i>Post-Hearing Brief-[Claimant]-SPA</i>                                   |
|  | <i>Costs Submissions-[Respondent]-ENG</i>                                  |
| <i>Observations to Request for [XX]-[Claimant]-SPA</i> |  |

ANNEX C

**DOCUMENT PRODUCTION SCHEDULE**

| 1                            | 2  | 3   |          | 4   | 5  | 6                    |
|------------------------------|--|---|----------|---|--|----------------------|
| Requesting Party<br>[insert] |  |   |          |   |  |                      |
| No.                          | Documents or Category of Documents Requested | Relevance and Materiality According to Requesting Party           |          | Responses / Objections to Document Requests | Replies to Objections to Document Requests | Tribunal's Decisions |
|                              |  | Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports | Comments |   |  |                      |
|                              |  |   |          |   |  |                      |
|                              |  |   |          |   |  |                      |
|                              |  |   |          |   |  |                      |