

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.**

**v.**

**Romania**

**(ICSID Case No. ARB/15/31)**

---

**PROCEDURAL ORDER No. 30**

***Members of the Tribunal***

Prof. Pierre Tercier, President of the Tribunal  
Prof. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal Yetano

***Assistant to the Tribunal***

Ms. Maria Athanasiou

---

28 April 2020

**I. THE RELEVANT PROCEDURAL STEPS**

1. On 26 August 2016, the Tribunal issued *Procedural Order No. 1* (“PO 1”) on the procedure of the present arbitration, together with the Procedural Timetable. Section 17.2 of PO 1 reads as follows:

*Neither party shall be permitted to submit any testimony beyond what is contemplated in §18 below that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.*

2. On 25 May 2019, Respondent filed its *Rejoinder*, together with factual exhibits, legal authorities, witness statements, expert reports, legal opinions and a “declaration” from Mr. Victor Ponta.
3. On 19 July 2019, Claimants sent a letter to the Tribunal, requesting to (a) exclude from the record testimony that they have no opportunity to confront through cross examination and (b) submit focused rebuttal evidence in response to the new evidence first submitted by Respondent with its *Rejoinder* (“Application”). A series of letters on Claimants’ Application were subsequently exchanged on 9, 20 and 27 August 2019.
4. On 6 September 2019, the Tribunal issued *Procedural Order No. 23* (“PO 23”), deciding on Claimants’ Application and for a rebuttal phase to take place as follows:

*4. A limited and focused opportunity of rebuttal shall take place as follows:*

*(i) Claimants shall submit limited rebuttal document in response to the new issues presented in Respondent’s Rejoinder witness statements and expert reports (50 pages maximum) **by 4 October 2019**.*

*(ii) Respondent shall submit any rebuttal documents testimony (50 pages maximum) **by 1 November 2019**.*

*(iii) The timing and scope of the direct examination of both Parties’ witnesses and experts shall be handled by the Tribunal with flexibility. The general timing of the Hearing will be decided after consulting with the Parties, during the Pre-hearing Organization Meeting. In case the Parties wish to extend the scope of the direct examinations they should indicate the subject-matters by the dates on which their rebuttal documents are due.*

*(iv) Both Parties shall have, if necessary, a further opportunity for rebuttal of these documents, during the Hearing and during post-hearing submissions. (emphasis as in original)*

5. On 26 September 2019, Respondent requested the bifurcation of the hearing of December 2019, so as to ensure that the Parties have sufficient time to conduct a proper examination of witnesses and experts (“Respondent’s Request for Bifurcating the Hearing”).

6. On 30 September 2019, Claimants communicated their response and objection to Respondent's Request for Bifurcating the Hearing. Further correspondence on such Request was exchanged on 1 and 8 October 2019.
7. On 15 October 2019, the Tribunal decided to *bifurcate the hearing* into (a) two weeks as originally scheduled from 2 to 13 December 2019 and (b) one additional week as soon as possible thereafter.
8. On 11 October 2019, Claimants filed their rebuttal documents. Respondent provided its comments thereon on 16 October 2019. Claimants replied to such comments on 18 October 2019.
9. On 22 October 2019, the Tribunal issued Procedural Order No. 24, ruling on the appropriateness of Claimants' rebuttal testimony and, in relevant part, as follows:

*1. Claimants' rebuttal documents are admissible. Respondent shall have an equal opportunity (in terms of length) to respond to Claimants' submission by 14 November 2019. Such equal opportunity shall not be interpreted as an unlimited freedom in relation to the length and scope of its submission.*

10. On 14 November 2019, Respondent filed its sur-rebuttal documents, comprising also witness statements and expert reports. Claimants objected to Respondent's submission on 19 November 2019. Claimants noted, among other things, the following:

*(1) Claimants are prepared to proceed on the basis that Dr. Burrows' third expert report, the supplemental witness statements of Ms. Jeflea and Messrs. Cămărășan, Devian, Golgoș, and Jurca, and Respondent's proposed rebuttal documents all will be accepted into the record, thus providing Respondent a significantly greater opportunity to present its case than is being afforded to the Claimants.*

*(2) Claimants, however, object to Respondent's proposed introduction of yet another new expert report, by Dr. Brady, and respectfully request the Tribunal to rule that Dr. Brady's written expert report shall not be admitted into the record and that Dr. Brady may not otherwise provide testimony in this proceeding.*

*(3) Further, in its November 14, 2019 letter, Respondent purports to reserve for itself various rights, such as to supplement its rebuttal submission, adduce additional expert evidence, and call witnesses for surrebuttal testimony. Should Respondent seek to exercise such purported rights, Claimants reserve their right to object.*

11. On 21 November 2019, the Tribunal sent a letter to the Parties, reconsidering its decisions on PO 23 and PO 24 and deciding to proceed as follows:

*1. Both Parties shall **resubmit only their rebuttal documents that will be used/discussed during their Opening Statements and in direct or cross examinations**, together with the list enclosed herein and as completed by the Parties. The Parties shall resubmit such documents in a readable format [...].*

*These documents **shall not exceed 100 pages.***

[...]

*2. Respondent's supplemental witnesses and expert reports are, in light of Claimants' proposal in their letter of 19 November 2019, admissible.*

*3. Respondent's new expert report of Dr. Brady is inadmissible.*

*4. If need be, during the hearing, the Arbitral Tribunal will discuss with the Parties to examine whether they should have an opportunity to submit additional documents on the rebuttal issues during the phase following the hearing. (emphasis as in original)*

12. On 25 November 2019, Claimants resubmitted their rebuttal documents.
13. On 27 November 2019, Respondent resubmitted its sur-rebuttal documents.
14. On the same date, the European Commission ("EC") applied for leave to intervene as a non-disputing party.
15. Between 2 and 13 December 2019, the first hearing was held at the premises of the ICSID in Washington DC. During the hearing, the Parties and the Tribunal discussed the possibility for a further submission of rebuttal documents (Tr. 02.12.2019, 26:15-20, Tr. 13.12.2020, 3308:11-20). Meanwhile, on 7 December 2019, the Tribunal informed the EC and the Parties that it would grant the EC's Application for leave to intervene as a non-disputing party and therefore allow the EC's submission.
16. On 17 December 2019, the Tribunal sent a letter to the Parties, directing them as follows in connection with the "rebuttal documents":

*The Arbitral Tribunal refers to its letter of 21 November 2019, deciding, among other things that, "[i]f need be, during the hearing, the Arbitral Tribunal will discuss with the Parties to examine whether they should have an opportunity to submit additional documents on the rebuttal issues during the phase following the hearing".*

*If the Parties wish to file such documents, they shall do so in the form of a simultaneous filing not exceeding fifty pages for each Party. The Parties are invited to confer and agree on the deadline for the purposes of this filing, if any, and inform the Arbitral Tribunal accordingly.*

The Tribunal also invited the Parties to "if they deem[ed] useful, comment on the European Commission's submission on the jurisdictional issues". The Tribunal noted that "any such comments must be limited to the EC's filed submission and must be brief, taking into consideration the arguments already submitted".

17. On 10 April 2010, the Parties simultaneously filed (a) their rebuttal documents and (b) their respective comments on the EC's submission.

- *Claimants* incorporated in their 11-page letter an Annex describing rebuttal documents C-2957 to C-2981, such documents totalling 50 pages (Cl. 10.04.2020).
  - *Respondent* submitted two categories of documents to rebut new evidence tendered by the Claimants on direct examination: i) a supplemental expert report by Behre Dolbear, authored by Mr. Michael (Mike) McLoughlin and its exhibits BD-24 to BD-30, and ii) the Expert Opinion of Dr. Thomas Brady (Resp. 10.04.2020).
18. On 13 April 2020, each Party requested leave to comment on the other Party’s rebuttal document submission of 10 April 2020. The Tribunal granted the Parties leave to comment, in a maximum of three pages.
19. On 24 April 2020, the Parties filed their comments to the other Party’s rebuttal document submission.
- *Claimants* commented on the Parties’ respective rebuttal submissions and requested the Tribunal to (a) admit Claimants’ 50 pages of rebuttal documents and (b) exclude the two new expert reports by the two new expert witnesses Respondent has proffered (Cl. 24.04.2020).
  - With its comments, *Respondent* filed a nine-page Annex commenting on each of Claimants’ rebuttal documents. Respondent argued that, with one exception, none of the documents filed by Claimants on 10 April 2020 falls within the scope of admissible evidence. Respondent submitted that allowing these documents into the record would constitute a serious departure from a fundamental rule of procedure within the meaning of Article 52(1)(d) of the ICSID Convention.
- Respondent also objected to Claimants’ submission of 22 new legal authorities with Claimants’ comments to the EC’s submission (Resp. 24.04.2020).
20. On the same date, Claimants sent an email, objecting to Respondent’s nine-page “unauthorized Annex” to their letter submitting further comments on Claimants’ list of rebuttal documents and respectfully requesting that such Annex be disregarded.
- Claimants also objected to Respondent’s arguments regarding legal authorities referenced in Claimants’ observations on the EC’s submission. They argued that Respondent’s arguments on that issue should be summarily rejected or else Claimants must be given an opportunity to address Respondent’s objection (Cl. 24.04.2020 bis).
21. On 25 April 2020, Respondent sent an email, noting that Claimants are in direct breach of the Tribunal’s direction that “[t]here shall be no further correspondence on the issue” and that Respondent has complied with the Tribunal’s directions since its letter of 24 April 2020 only comprises three pages. The Annex is the same as Claimants’ Annex to their rebuttal evidence submission of 10 April 2020. Respondent has merely added a few comments. This was necessary due to the massive volume of Claimants’ rebuttal evidence (Resp. 25.04.2020).

## **II. THE ISSUES**

22. The issues before the present Tribunal are the following:
- *First*, the admissibility of (a) Claimants’ rebuttal documents; and (b) Respondent’s rebuttal documents, both dated 10 April 2020.
  - *Second*, the admissibility of the legal authorities filed with Claimants’ observations on the EC’s submission.
23. Before addressing each issue separately, the Tribunal shall briefly set out the Parties’ positions in connection thereto.

## **III. THE PARTIES’ POSITIONS**

### **A. Claimants’ rebuttal documents**

#### (1) Claimants

24. Claimants filed their supplemental rebuttal documents listed in an Annex A to their letter of 10 April 2020 (Cl. 10.04.2020).
25. Claimants submitted that the limited opportunity for rebuttal has not fully remedied the prejudice caused to Claimants by Respondent (Cl. 24.04.2020).
26. The Tribunal did not limit the additional rebuttal documents to addressing evidence presented at the December hearing. Additional rebuttal documents were allowed to permit the Parties to address the new issues set out in the Rejoinder witness and expert testimony during the current phase of the case. The Tribunal repeatedly indicated that the Parties may have a further opportunity to submit documents on the same “rebuttal issues”, i.e., on the new issues raised in the Rejoinder and in the first round of rebuttal documents (Cl. 24.04.2020).
27. Claimants complied with that directive. There is a small oversight as to the description in Annex A for Exhibits C-2958, C-2959, and C-2960. In addition to responding to new Rejoinder argument and questioning of Mr. Avram by two Tribunal members, these documents address new testimony of Ms. Mocanu submitted with the Rejoinder as to whether RMGC believed contemporaneously that the technical assessment was completed at the 29 November 2011 TAC meeting and that a decision on the Environmental Permit was due to be made soon thereafter (Cl. 24.04.2020).
28. Therefore, Claimants’ rebuttal documents should be admitted. Claimants are also ready to address any specific objections now raised by Respondent to any particular documents should the need arise (Cl. 24.04.2020).
29. Claimants objected to Respondent’s Annex commenting on Claimants’ list of rebuttal documents and requested that such Annex be disregarded (Cl. 24.04.2020 bis).

(2) Respondent

30. Respondent applied for the exclusion of Claimants' Annex A documents which do not respond to the rebuttal testimony of Respondent's witnesses. Claimants have improperly filed entirely new evidence disregarding the Tribunal's directions (Resp. 24.04.2020).
31. From the start, Respondent argued that Claimants' witnesses should not be allowed to provide new rebuttal evidence on direct examination as counsel for Respondent would not be in a position to address that new evidence during the cross-examination and as Respondent's witnesses would not be in a position to address that new evidence during their own direct examinations. Thus, when it produced its sur-rebuttal documents before the hearing, Respondent reserved the right to supplement its sur-rebuttal submission with further responsive evidence after hearing the rebuttal testimony of Claimants' witnesses and experts (Resp. 24.04.2020).
32. Therefore, the purpose of allowing rebuttal documents after the hearing was to address rebuttal documents provided by the opposing Party before the hearing and/or new oral evidence provided by their witnesses during direct examination. The Parties were to avail themselves of this opportunity only "if necessary" and only to address these "rebuttal issues". Admissible evidence is therefore only (i) evidence in response to oral evidence given on direct examination at the December hearing regarding rebuttal documents or (ii) evidence in response to rebuttal evidence admitted in November 2019 but which is to be given only in the September 2020 hearing (Resp. 24.04.2020).
33. Further, in its letter dated 24 April 2020, Respondent enclosed an Annex commenting on the list of Claimants' rebuttal documents (Resp. 24.04.2020). With the exception of Exhibit C-2957, none of the documents filed by Claimants on 10 April 2020 falls within the scope of admissible evidence. They are all in response to Respondent's Rejoinder, rather than in response to rebuttal evidence. Further internal RMGC emails are inadmissible because these witnesses have already been heard and Respondent therefore cannot cross-examine them regarding these documents. Thus, Claimants must not be permitted to rely on these documents during the Opening Statement and/or in response to the Tribunal's questions as they apparently wish to do so. Whatever Opening Statements are given at the hearing in September serve to introduce the testimony to be heard at that hearing not as a platform for Claimants to re-argue their case to seek to mitigate the testimony of their witnesses from the first hearing or to introduce new evidence that could have been produced with the Memorial four years ago. Allowing these documents into the record would thus constitute a serious departure from a fundamental rule of procedure within the meaning of Article 52(10(d) of the ICSID Convention (Resp. 24.04.2020).
34. Respondent's comments to the Annex became necessary due to the massive volume of Claimants' rebuttal evidence and to assist the Tribunal in deciding on the admissibility of Claimants' rebuttal documents (Resp. 25.04.2020).

**B. Respondent's rebuttal documents**

(1) Claimants

35. Claimants argued that Respondent disregarded the rules when it submitted (i) a new expert report by a new expert with accompanying exhibits on the methods and impacts of mind blasting and (ii) a new expert report by a new expert previously excluded from the record by the Tribunal as inadmissible. The submission must be rejected (Cl. 24.04.2020).
36. There is no basis for Respondent to seek again to introduce two new expert reports by two new experts under the guise of additional rebuttal documents. Nor are there "exceptional circumstances" that would warrant the admission of new expert testimony under section 17.2 of PO 1. Admitting them at this stage would compound the prejudice Claimants already suffered as a result of Respondent's earlier procedural issues which moreover has not been fully remedied (Cl. 24.04.2020).
37. Further, Respondent's six page letter of 10 April 2020 commenting on the new proffered expert reports was not authorized by the Tribunal except for the two short paragraphs relating to the EC submission and should thus be disregarded. In any event, the arguments are groundless (Cl. 24.04.2020).
38. Respondent misstates the reasons for previously excluding Dr. Brady's expert report. Further, Claimants disagree with Respondent's argument that Ms. Lorincz's hearing testimony, to which Mr. McLoughlin's expert report seeks to respond, is "new" and "factually inaccurate". Respondent did not ask any of the Romanian law experts who testified after Ms. Lorincz to comment on her testimony. Respondent therefore had ample opportunity to submit any expert testimony it considered relevant on that subject with its Counter-Memorial and should not be permitted to do so now (Cl. 24.04.2020).
39. Respondent also should not have leave to file 50 new pages as this was to be a simultaneous submission (Cl. 24.04.2020).

(2) Respondent

40. Respondent's rebuttal evidence complies with the Tribunal's directions and falls within the scope of admissible evidence (Resp. 24.04.2020).
41. The Supplemental Behre Dolbear Report responds to the new rebuttal evidence given on direct examination by Ms. Lorincz at the December hearing (Resp. 10.04.2020; Resp. 24.04.2020).
42. The resubmitted Dr. Brady Expert Opinion responds to rebuttal evidence that Ms. Jeannes intends to provide at the second hearing and that the Tribunal admitted in October 2010. Respondent's right to plead last, as recognized by the Tribunal in PO 23 and PO 24, affords Respondent the right to respond to this anticipated testimony, including by submitting rebuttal evidence. The Tribunal's reasoning for rejecting Dr. Brady's Expert Opinion in its 21 November 2019 letter was premised on the limited



amount of time between the submission of its evidence and the hearing in December. This issue of timing is no longer pertinent at this juncture. Moreover, the Tribunal stated that, if “*need be, during the hearing the Arbitral Tribunal will discuss with the Parties to examine whether they should have an opportunity to submit additional documents on the rebuttal issues during the phase following the hearing*”. Therefore, Dr. Brady’s rebuttal evidence should be included in the record. A failure to do so would constitute a breach of Respondent’s right to be heard since Respondent would effectively be prevented from adducing evidence in response to Mr. Jeannes’ new testimony (Resp. 10.04.2020; Resp. 24.04.2020).

43. Conversely, the inclusion of Dr. Brady’s Expert Opinion in the record is in no way prejudicial to Claimants. Claimants have been in possession of Dr. Brady’s two-page Expert Opinion since 14 November 2019. Moreover, Mr. Jeannes will have the opportunity to raise any points of disagreement during his direct examination. Finally, as Respondent is not able to determine the exact content of the direct testimony that will be elicited from Mr. Jeannes, Respondent reserves the right to adduce additional expert evidence from Dr. Brady during his opening presentation in sur-rebuttal to the evidence provided by Mr. Jeannes (Resp. 10.04.2020; Resp. 24.04.2020).
44. In both cases, Claimants will have an opportunity to test this evidence through cross of the witnesses, thereby safeguarding their right to be heard. Not admitting this evidence would run counter to Respondent’s right to plead last and undermine its right to due process (Resp. 24.04.2020).

### **C. Claimants’ legal authorities**

#### **(1) Respondent**

45. In its letter of 10 April 2020, Respondent took note of the position of the EC on the issue of consent to arbitration under the UK-Romania BIT and noted that its position remains that presented in Respondent’s Additional Preliminary Objection as further supplemented in its Rejoinder. It argued that none of the arguments presented on the issue after the Rejoinder by the EC and by Claimants in their Surrejoinder or at the hearing have caused Respondent to adjust its position (Resp. 10.04.2020).
46. However, in its letter dated 24 April 2020, Respondent objected to the submission of 22 new legal authorities with Claimants’ Comments to the EC’s submission. According to Respondent, the Tribunal had only allowed comments limited to the EC’s submission that would be brief and take into consideration the arguments already submitted. The submission of new legal authorities was never contemplated (Resp. 24.04.2020).

#### **(2) Claimant**

47. On 10 April 2020, Claimants filed their Response to the EC’s Amicus Brief, together with legal authorities CL-314 to CL-334 (Cl. 10.04.2020).
48. On 24 April 2020, Claimants objected to Respondent’s arguments concerning Claimants’ legal authorities. According to Claimants, Respondent’s arguments on that

issue should be summarily rejected or else Claimants must be given an opportunity to address Respondent's objection (Cl. 24.04.2020 bis).

#### **IV. THE TRIBUNAL'S CONSIDERATIONS**

49. The Tribunal has thoroughly considered the Parties' positions in connection with the relevant issues and decides the following.

##### **A. The Parties' rebuttal documents**

50. The first issue before the Tribunal is the admissibility of (a) Claimants' rebuttal documents and (b) Respondent's rebuttal documents filed on 10 April 2020 (see above para. 22). To decide this issue, the Tribunal must consider the purpose of the rebuttal opportunities afforded to the Parties. Specifically:

- (a) What was the purpose of the first round of rebuttal testimony?
- (b) What was the purpose of the further round of rebuttal testimony?

51. *First*, the "rebuttal procedure" that was agreed to and that actually took place was a special, unconventional procedure that sought to ensure that each Party had the right to be heard and to plead its case. It was a procedure necessitated by the circumstances generated by Respondent's Rejoinder submission, that sought to balance the right to be heard with the right of a party to plead last, as well as with the necessity to preserve the integrity of the proceedings. In this connection, the Tribunal recalls the following:

- In PO 23, the Tribunal afforded both Parties "[a] *limited and focused opportunity of rebuttal*" and contemplated "*a further opportunity for rebuttal of these documents, during the Hearing and during post-hearing submissions*" (see above para. 4).
- The Tribunal in the meantime decided to bifurcate the hearing (see above para. 7).
- The Parties thereafter filed their rebuttal documents consecutively (see above paras 8 and 10).
- Following a dispute on the admissibility of the Parties' rebuttal submissions, and faced with the tight time-frame in connection with the December hearing, the Tribunal ordered both Parties to "*resubmit only their rebuttal documents that will be used / discussed during their Opening Statements and in direct or cross examinations*" in a format provided by the Tribunal and in a maximum of 100 pages. The Tribunal noted that it would discuss with the Parties during the hearing "*whether they should have an opportunity to submit additional*

*documents on the rebuttal issues during the phase following the hearing*” (see above para. 11).

- Claimants then submitted their rebuttal documents, followed by Respondent’s sur-rebuttal documents (see above paras 12-13) and the possibility for a further submission of rebuttal documents was indeed discussed during the December hearing (see above para. 15).
- The Tribunal subsequently decided that the Parties shall have such “*opportunity to submit additional documents on the rebuttal issues during the phase following the hearing*” and invited the Parties to do so “*in the form of a simultaneous filing not exceeding fifty pages for each Party*” (see above para. 16).

52. There is no question, therefore, that the *first rebuttal procedure* was intended to afford Claimants an opportunity to submit documents in rebuttal to all or any new issues that were raised in Respondent’s Rejoinder, in an attempt to prevent any compromise to Claimants’ right to be heard. It also sought to respect Respondent’s right to plead last, by affording a sur-rebuttal opportunity on all or any of the rebuttal documents to be filed by Claimants.

53. Thereafter, and in a new “bifurcated” and tight framework, the Tribunal was forced to reconsider its decision on the manner in which the rebuttal procedure was to be accepted. It therefore *limited the scope and volume of the first rebuttal filing to the December hearing*, i.e., only to the new Rejoinder issues that were relevant to the December hearing.

54. *Second*, the Tribunal had consistently contemplated the possibility for a further rebuttal opportunity, in order to ensure that the Parties had an adequate opportunity to address such issues. In the context of the first original rebuttal procedure (see above para. 52), this would be effected by way of oral pleadings during the single hearing and later in post-hearing briefs. In the context of the first reconsidered rebuttal procedure (see above para. 53), this would be and actually was effected again by way of oral pleadings during the December hearing and in further simultaneous submissions.

55. While the exact scope of these further simultaneous submissions was not addressed, the Parties are in agreement that it would include the new Rejoinder issues in connection with the September hearing. What they disagree on is: (a) the extent to which the simultaneous rebuttal submissions should address “all” new Rejoinder issues or merely those addressed during the direct examinations of the December Hearing; and (b) whether the rebuttal submissions shall include new witness and expert testimony. The Tribunal considers that the purpose of the further rebuttal opportunity is:

- To address the rebuttal issues discussed during the December hearing in direct and cross examinations, in opening statements and during questions posed by the Tribunal. This does not include new issues that were raised in the Rejoinder but were not addressed during the December hearing. Further, because there will not be a further opportunity for oral testimony on the December issues, no witness or expert testimony in connection thereto shall be admitted.

- To address the new Rejoinder issues to be discussed during the September hearing. In this connection, the Tribunal considers that witness and expert testimony is appropriate and admissible. It also considers that, in line with the right of the party to plead last and the first reconsidered rebuttal procedure (see above para. 53), Respondent should address these issues in a sur-rebuttal context.

56. In light of the above, Claimants' rebuttal documents and Respondent's rebuttal documents filed on 10 April 2020 (see above para. 17) are inadmissible. The Parties shall resubmit their further rebuttal documents as follows:

- (i) The Parties shall simultaneously address the rebuttal issues addressed in the December hearing in general. This can be done by way of arguments and / or documents but not new expert or witness testimony. To the extent that a Party needs to reply to any such argument and / or document, it can do so in the context of the Post-Hearing Briefs following the September hearing. The Parties shall do so **by 12 May 2020** and in **a maximum of 25 pages**.
- (ii) The Parties shall consecutively address the rebuttal issues to be discussed in the September Hearing. This can be by way of arguments and / or documents, as well as by new expert or witness testimony. The Parties shall follow the format that was implemented for the December hearing documents (see template in Tribunal's letter dated 21 November 2019). Claimants shall do so **by 12 May 2020** and in **a maximum of 25 pages**. Respondent shall do so **by 26 May 2020** and in **a maximum of 25 pages**.

#### **B. Claimants' legal authorities**

57. The second issue before the Tribunal is the admissibility of Claimants' legal authorities filed with their observations to the EC submission (see above para. 22).
58. It is recalled that the Tribunal decided to admit the EC's submission although it was filed very belatedly in the present proceedings (see above para. 15). While the Tribunal considered that it was fully briefed on the jurisdictional objection relevant to the EC's submission, it nevertheless invited the Parties to provide their comments, if any, very briefly and simultaneously (see above para. 16). Respondent chose to refer to its previous submissions, whereas Claimants filed a 19-page document together with legal authorities (see above para. 17).
59. When the Tribunal invited the Parties to provide brief comments to the EC's submission it did not exclude the possibility of filing legal authorities. Each Party had the equal opportunity and the right to provide comments in the manner it considered appropriate. The Tribunal therefore does not consider that Claimants' EU filing is inappropriate or excessive. Consequently, Claimants' legal authorities filed with their observations on the EC's submission are admissible.

60. The Tribunal recalls that there will be an opportunity for both Parties to address any issues, including jurisdictional issues, in their Post-Hearing Briefs.

**V. ORDER**

1. *Claimants' rebuttal documents and Respondent's rebuttal documents filed on 10 April 2020 are inadmissible.*
2. *The Parties shall resubmit their further rebuttal documents as follows:*
  - (i) *The Parties shall simultaneously address the rebuttal issues addressed in the December hearing in general. This can be done by way of arguments and / or documents but not new expert or witness testimony. To the extent that a Party needs to reply to any such argument and / or document, it can do so in the context of the Post-Hearing Briefs following the September hearing. The Parties shall do so by 12 May 2020 and in a maximum of 25 pages.*
  - (ii) *The Parties shall consecutively address the rebuttal issues to be discussed in the September Hearing. This can be done by way of arguments and / or documents, as well as by new expert or witness testimony. The Parties shall follow the format that was implemented for the December hearing documents (see template in Tribunal's letter dated 21 November 2019). Claimants shall do so by 12 May 2020 and in a maximum of 25 pages. Respondent shall do so by 26 May 2020 and in a maximum of 25 pages.*
3. *Claimants' legal authorities filed with their observations on the EC's submission are admissible.*
4. *All other requests are rejected.*

On behalf of the Tribunal,

---

Prof. Pierre Tercier  
President of the Tribunal