

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ENCAVIS AND OTHERS

v.

ITALIAN REPUBLIC

ICSID Case No. ARB/20/39

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Ms. Wendy Miles QC, Arbitrator

Mr. Alexis Mourre, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

Assistant to the Tribunal

Ms. Alba Briones

May 21, 2021

CONTENTS AND AGENDA FOR THE FIRST SESSION

1. Applicable Arbitration Rules	4
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	4
3. Fees and Expenses of Tribunal Members	4
4. Presence and Quorum	5
5. Rulings of the Tribunal	5
6. Power to Fix Time Limits	6
7. Secretary of the Tribunal	6
8. Assistant of the Tribunal	7
9. Representation of the Parties	8
10. Apportionment of Costs and Advance Payments to ICSID.....	9
11. Place of Proceeding.....	9
12. Procedural Language(s), Translation and Interpretation	10
13. Routing of Communications	10
14. Number of Copies and Method of Filing of Parties' Pleadings.....	11
15. Number and Sequence of Pleadings	12
16. Production of Documents	12
17. Submission of Documents	13
18. Witness Statements and Expert Reports	14
19. Examination of Witnesses and Experts.....	16
20. Application of soft law.....	16
21. Pre-Hearing Organizational Meetings	16
22. Preparation for the Hearing.....	17
23. Hearings	17
24. Records of Hearings and Sessions	18
25. Post-Hearing Memorials and Statements of Costs.....	18
26. Publication	18

Procedural Order No. 1

INTRODUCTION

The First Session of the Tribunal was held on March 19, 2021, at 11 am Washington, D.C. / 4 pm Paris time, by videoconference. The Session was adjourned at 12 am Washington, D.C. / 5 pm Paris time.

An audio recording of the Session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal

Ms. Wendy Miles, Arbitrator

Mr. Alexis Mourre, Arbitrator

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal

Assistant to the Tribunal

Ms. Alba Briones

Participating on behalf of Claimant:

Ms. Amy Roebuck Frey, King & Spalding LLP

Mr. Christopher S. Smith, King & Spalding LLP

Participating on behalf of Respondent:

Ms. Laura Delbono, Avvocatura dello Stato

Mr. Pietro Garofoli, Avvocatura dello Stato

Ms. Maria Chiara Malaguti, Ministero degli Affari Esteri e della Cooperazione Internazionale (external expert)

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 11, 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the Session, the Tribunal now issues the present Order:

Procedural Order No. 1

PROCEDURAL ORDER NO. 1

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A. Amendments to the Procedural Timetable will be made by reissuing 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 16, 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 16, 2021.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

2.4. The contact details for the Members of the Tribunal are:

Prof. Juan Fernández-Armesto
Armesto & Asociados
General Pardiñas, 102
Madrid 28006
Spain
Tel: +34 915 621 625

Ms. Wendy Miles QC
20 Essex Street
London WC2R 3AL
United Kingdom
Tel:

Mr. Alexis Mourre
33-43 avenue du
Président Wilson
75116 Paris
France
Tel:

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.

Procedural Order No. 1

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/her 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 two months.

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.

Procedural Order No. 1

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The time limits set forth in Annex A shall govern this proceeding. Short extensions of time may be agreed between the Parties, provided that they are notified to the Tribunal before the original deadline and do not materially affect the overall schedule of proceedings and any agreed hearing dates as set out in Annex A.
- 6.2. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.3. 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. Ella Rosenberg, 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. Ella Rosenberg
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7756
Fax: + 1 (202) 522-2615
Email: erosenberg@worldbank.org
Paralegal name: Ms. Elizabeth Starkey
Paralegal email: estarkey@worldbank.org

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

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

Procedural Order No. 1

8. Assistant of the Tribunal

8.1. On 25 February 2021, the Tribunal proposed to the Parties that Ms. Alba Briones be appointed as Assistant of the Tribunal. Ms. Briones' *curriculum vitae* was distributed to the Parties on that day. She is Of Counsel at Armesto & Asociados, the President's law firm. The Tribunal explained to the Parties that it considered that the appointment of an Assistant of the Tribunal would assist the overall cost and time efficiency of the proceedings.

8.2. As stated in the Tribunal's communication of 25 February 2021, the Assistant of the Tribunal shall work at all times under the specific instructions and continuous control and supervision of the Tribunal, and the Members of the Tribunal will not delegate to the Assistant of the Tribunal any of the duties and obligations incumbent on them as arbitrators.

8.3. The Assistant of the Tribunal shall undertake only such specific tasks as are assigned to her by the Tribunal, including:

- Attending meetings, hearings and deliberations, taking notes;
- Summarizing submissions, review evidence and authorities, conduct legal research, write notes or memoranda on factual and legal issues, prepare preliminary drafts of decisions or sections of awards, under the specific instructions and continuous control and supervision of the Tribunal.

8.4. The Tribunal shall ensure that the Assistant of the Tribunal does not duplicate the tasks of the ICSID Secretariat.

8.5. The Assistant of the Tribunal shall be bound by the same duties of confidentiality, independence and impartiality as the Arbitral Tribunal, and shall sign a declaration to that effect.

8.6. The Parties received the Assistant's declaration of independence and impartiality on February 25, 2021. With the express agreement of the Parties, the Tribunal hereby appoints Ms. Alba Briones as Assistant of the Tribunal.

8.7. Ms. Alba Briones' contact details are the following:

Alba Briones
Maudes 26, 6,6
28003 Madrid
Spain
Tel: +34 915 62 16 25
Email: abm@jfarmesto.com

8.8. The Assistant to the Tribunal will be remunerated directly by the President of the Tribunal, without causing any additional cost to the Parties, save that the Assistant of the Tribunal will be entitled to reimbursement of reasonable expenses related to the

Procedural Order No. 1

Hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.

8.9. The Tribunal may remove the Assistant of the Tribunal at its discretion. The Tribunal will remove the Assistant if the Assistant ceases to work for Armesto & Asociados. The Tribunal may appoint a substitute, by submitting to the Parties the substitute's *curriculum vitae* and declaration of independence and impartiality. If either Party objects to the independence and impartiality of the substitute, the Tribunal shall proceed to appoint or not appoint that individual on the basis of the reasonableness of the objection.

9. Representation of the Parties

Arbitration Rule 18

9.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Mr. Kenneth R. Fleuriot
King & Spalding
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006
United States of America
Tel.: +1 202 626 8970
Email: KFleuriot@KSLAW.com
and
Ms. Amy Roebuck Frey
Ms. Isabel San Martín
King & Spalding
12, cours Albert 1er
75008 Paris
France
Tel.: +33 1 7300 3914
+33 17300 3937
Email: AFrey@KSLAW.com
ISanMartin@KSLAW.com
and
Mr. Reginald R. Smith
Mr. Kevin D. Mohr
King & Spalding
1100 Louisiana St., Ste. 4000
Houston, TX 77002
United States of America
Tel.: +1 713 751 3226

For Respondent

Avv. Carlo Sica
Avv. Giacomo Aiello
Avv. Pietro Garofoli
Avv. Laura Delbono
Prof. Maria Chiara Malaguti
Avvocatura Generale dello Stato
Via dei Portoghesi, 12
Rome 00186
Italy
Tel.: +39 06 68291
Email: carlo.sica@avvocaturastato.it
giacomo.aiello@avvocaturastato.it
pietro.garofoli@avvocaturastato.it

laura.delbono@avvocaturastato.it
mariachiara.malaguti@esteri.it

Procedural Order No. 1

+1 713 276 7428
Email: RSmith@KSLAW.com
KMohr@KSLAW.com
and
Mr. Christopher S. Smith
King & Spalding
1180 Peachtree St. N.E.
Atlanta, GA 30309
United States of America
Tel.: +1 404 572 3548
Email: CSSmith@KSLAW.com

10. Apportionment of Costs and Advance Payments to ICSID

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

- 10.1. 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.
- 10.2. By letter of February 17, 2021, ICSID requested that each Party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on March 9, 2021 and the Respondent's payment had not been received at the date of this order.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding

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

- 11.1. The Parties agree that if the hearing is able to proceed in person, the hearing for this matter will take place in Paris, France, preferably at the ICSID hearing facility.
- 11.2. The Tribunal may hold hearings at any other place that it considers appropriate if the Parties so agree.
- 11.3. In principle, the hearing shall be held in-person. If an in-person hearing is impossible due to health or other serious concerns, the hearing shall be conducted by any other means of communication as determined by the Tribunal after consultation with the Parties. If appropriate, the Tribunal will issue further guidance for the conduct of the hearing under the aforementioned exceptional circumstances in the event such circumstances arise, in advance of the hearing and after consultation with the Parties.
- 11.4. The Tribunal Members may deliberate at any place and by any appropriate means it considers convenient.

Procedural Order No. 1

12. Procedural Language(s), Translation and Interpretation

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

12.1. English is the procedural language of the arbitration.

[For Parties' Pleadings]

12.2. Documents filed in any other language must be accompanied by a translation into English.

12.3. 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.

12.4. 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.

12.5. Documents exchanged between the Parties in a language other than English under §16 below (Production of Documents) need not be translated.

[For Hearing]

12.6. 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.

12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §21 below), which witnesses or experts require interpretation.

12.8. 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.

13. Routing of Communications

Administrative and Financial Regulation 24

13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.

13.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal and the Assistant of the Tribunal.

13.3. 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 once both Parties' communications are received.

Procedural Order No. 1

13.4. 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.

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

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

14.1. The Parties shall:

14.1.1. By the relevant filing date, submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and

14.1.2. Within three business days after the electronic filing, upload the pleading with all the supporting documentation and updated index to the folder that will be created by ICSID for purposes of this case in ICSID's electronic file sharing platform (the "**Electronic Filing**").

For the avoidance of doubt, the Electronic Filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the Parties.

14.2. Electronic files of pleadings, witness statements, expert reports, and, to the extent possible, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word). Any spreadsheet or excel table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source.

14.3. All pleadings shall be accompanied by a cumulative index hyperlinked 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 and the language of the document. (Please follow the naming conventions contained in **Annex B**).

14.4. Following each factual allegation, the Parties shall make specific reference to evidence which supports that allegation, whenever possible. If an exhibit consists of more than one page, the Parties shall refer to the specific page or paragraph number upon which they rely and highlight the relevant section of the corresponding exhibit.

14.5. All documents and other evidence should be referenced in the Parties' respective pleadings. Parties should refrain from marshalling evidence without a specific reference in the submission with which the evidence is tendered.

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

Procedural Order No. 1

- 14.6. Five business days after the submission of the pleading, the Parties shall submit an index of all the supporting documentation attached to the pleading, organized in chronological order. This chronological index shall be updated for each pleading.
- 14.7. 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.
- 14.8. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

15. Number and Sequence of Pleadings

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

- 15.1. The proceedings shall consist of a written phase followed by an oral phase.
- 15.2. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in Annex A. Any amendment to the Procedural Timetable shall be reflected in an updated Annex A.
- 15.3. The Parties' first submissions shall set forth the facts, the legal argumentation and the relief sought. The Parties should endeavor to discharge their burden of proof in their first submissions and should not rely on later submissions to provide evidence for unsupported allegations made in the first submissions. The Parties' subsequent submissions shall be limited to replying to the arguments that the counterparty has raised in its previous submission.
- 15.4. All written submissions must contain consecutively numbered pages and paragraphs, and shall include a table of contents.
- 15.5. Neither Party shall be permitted to submit additional pleadings with regard to the merits outside of the Procedural Timetable, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.

16. Production of Documents

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

- 16.1. Either Party may apply for the production of documents from the other Party. If a Party wishes to request the production of documents from the other Party, it shall follow the deadlines set forth in Annex A.
- 16.2. In due course and after consultation with the Parties, the Tribunal shall issue a separate Procedural Order addressing the rules that will govern the Production of Documents phase in this arbitration.

Procedural Order No. 1

17. Submission of Documents

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

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §14 above.
- 17.3. Neither Party shall be permitted to submit additional or responsive documents or other evidence outside of the submissions agreed to in the Procedural Timetable attached as **Annex A**, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.
 - 17.3.1. Should a Party request leave to file additional or responsive evidence, that Party may not annex the evidence that it seeks to file to its request.
 - 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive evidence, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such an evidence.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 17.5. Evidence shall be submitted in the following form:
 - 17.5.1. Exhibits and Legal Authorities shall be numbered consecutively throughout these proceedings.
 - 17.5.2. 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.
 - 17.5.3. Each document marshalled shall have an individual exhibit number. The Parties should not tender multiple documents under one exhibit number.
 - 17.5.4. Exhibits and legal authorities shall be submitted in PDF format and shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The numbering shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, etc. 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 § 17.5.5.

Procedural Order No. 1

- 17.5.5. Electronic files and the accompanying indexes shall follow the naming conventions contained in Annex B.
- 17.5.6. Exhibits should be submitted in a searchable electronic file format, whenever possible.
- 17.6. 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.
- 17.7. 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.
- 17.8. 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 (preceded by “CD-” for Claimants, and “RD-” for Respondent), 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 Assistant of the Tribunal, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 18.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.
- 18.2. Neither Party shall be permitted to submit any testimony 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 (following the procedure outlined in §17.3).
- 18.3. Each witness statement and expert report shall be signed and dated by the witness and include:
- 18.3.1. A description of the witness’s position and qualifications, if relevant;
 - 18.3.2. A full and detailed description of the facts, and the source of the witness’s information as to those facts, sufficient to serve as that witness’s evidence in the matter in dispute;
 - 18.3.3. Any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as documents);

Procedural Order No. 1

- 18.3.4. A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing; and
 - 18.3.5. An affirmation of the truth of the witness statement.
- 18.4. Witness Statements shall be submitted in a searchable electronic file format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them and assist them in drafting an accurate and reliable statement, and to prepare for the Hearing.
- 18.6. Expert Reports shall be dated and signed by the expert or experts and contain:
- 18.6.1. The full name of the expert;
 - 18.6.2. A disclosure statement detailing any past and present relations of the expert with any Party, counsel or Member of the Tribunal;
 - 18.6.3. A brief description of the expert's qualifications;
 - 18.6.4. A brief description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - 18.6.5. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
 - 18.6.6. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
 - 18.6.7. His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;
 - 18.6.8. The documents relied on by the expert in the preparation of his or her report, which shall be provided as annexes to the report (which may have their own sequential numbering); any spreadsheet or table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source; and
 - 18.6.9. An affirmation of his or her genuine belief in the opinions expressed in the report.
- 18.7. Expert Reports shall be submitted in a searchable electronic file format and have consecutive numbering of pages, headings and paragraphs, as well as a detailed table of contents.

Procedural Order No. 1

19. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 19.1. A Party may be called upon by the opposing Party to produce at the Hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the Pleadings.
- 19.2. 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 for justified reasons at the discretion of the Tribunal.
- 19.3. The Parties shall notify the opposing Party which witnesses and experts they intend to call for cross-examination on the date specified in the Procedural Timetable. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any.
- 19.4. 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.
- 19.5. Direct examination is given in the form of witness statements and expert reports. 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 presentation. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.
- 19.6. As a general rule the scope of cross-examination will be limited to the contents of the witness statement or expert report. 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.

20. Application of soft law

- 20.1. Without prejudice to applicable provisions of the ICSID Arbitration Rules, the Tribunal may take into consideration the International Bar Association Rules for the Taking of Evidence in International Arbitration (2010) and the International Bar Association Guidelines on Party Representation in International Arbitration.

21. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 21.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties, as indicated in Annex A. It shall comprise

Procedural Order No. 1

- 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.
- 21.2. 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.
- 21.3. Following the pre-hearing organizational meeting, a Procedural Order will be issued by the Tribunal reflecting the decisions made in preparation for the Hearing.

22. Preparation for the Hearing

- 22.1. The two weeks prior to the Hearing shall be considered preparation time for the Parties and the Tribunal. Therefore, during that period, no procedural incident will be admitted and will be considered rejected *a limine*. However, the Party may present such incident at the beginning of the Hearing and the Tribunal will adopt the appropriate decision after hearing the counterparty.

23. Hearings

Arbitration Rules 20(1)(e) and 32

- 23.1. The oral procedure shall consist of a Hearing for examination of witnesses and experts, if any, and for oral arguments.
- 23.2. The Hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §11 above.
- 23.3. The Hearing shall take place on the week starting on October 10, 2022.
- 23.4. 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.
- 23.5. Allocation of time at the Hearing shall be addressed in the pre-hearing procedural order, but in principle shall be equal between the Parties, unless there is a severe disparity in the number of witnesses or experts presented by one Party, in which case the opposing Party shall be accorded additional time for cross-examination.
- 23.6. All Hearings shall be closed to the public.
- 23.7. 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:

Procedural Order No. 1

- 23.7.1. A chronology of relevant facts in tabular form;
- 23.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”); and
- 23.7.3. A list of the substantive issues required to be determined by the Tribunal.

24. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 24.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.
- 24.2. A verbatim transcripts in the procedural language 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.
- 24.3. The Parties shall agree on any corrections to the transcripts within 15 business days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter 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 revised transcripts.

25. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 25.1. The Tribunal will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

26. Publication

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

- 26.1. The Parties consent to ICSID publication of the Award and any order or decision issued in the present proceeding.

Procedural Order No. 1

[signed]

Juan Fernández-Armesto
President of the Tribunal
Date: May 21, 2021

Procedural Order No. 1

ANNEX A

TIMETABLE

Date	Lapse (in days)	Party / Tribunal	Description
19 March 2021	N/A	ALL	First Session
17 July 2021	120 DAYS	CLAIMANTS	Memorial on the Merits
14 November 2021	120 DAYS	RESPONDENT	Counter-Memorial on the Merits (including Jurisdictional Objections, if any)
28 November 2021	14 DAYS	CLAIMANTS AND RESPONDENT	Request for Production of Documents (to be exchanged between the Parties only)
12 December 2021	14 DAYS	CLAIMANTS AND RESPONDENT	Production of Uncontested Documents, and Responses and/or Objections to the Request for Production of Documents (to be exchanged between the Parties only)
19 December 2021	7 DAYS	CLAIMANTS AND RESPONDENT	Reply to Objections to the Request for Production of Documents (to be sent to the Tribunal and opposing Party)
9 January 2022	21 DAYS	TRIBUNAL	Decision on Objections to Request for Production of Documents
23 January 2022	14 DAYS	CLAIMANTS AND RESPONDENT	Production of Documents Ordered by the Tribunal

Procedural Order No. 1

Date	Lapse (in days)	Party / Tribunal	Description
23 April 2022	90 DAYS	CLAIMANTS	Reply on the Merits (and Counter-Memorial on Jurisdiction, if any)
22 July 2022	90 DAYS	RESPONDENT	Rejoinder on the Merits (and Reply on Jurisdiction, if any)
5 August 2022	14 DAYS	CLAIMANTS	Rejoinder on Jurisdiction (if any)
4 September 2022	30 DAYS	CLAIMANTS AND RESPONDENT	Notification of Witnesses and Experts to be Cross-Examined
15 September 2022	11 DAYS	ALL	Pre-Hearing Organizational Meeting
30 September 2022	15 DAYS	CLAIMANTS AND RESPONDENT	Joint Submissions Under §23.7 of Procedural Order No. 1
10 to 16 October 2022	≥7 DAYS	ALL	Hearing
TBD	/	CLAIMANTS AND RESPONDENT	Simultaneous Post-Hearing Briefs
TBD	/	CLAIMANTS AND RESPONDENT	Simultaneous Reply Post-Hearing Briefs (if any)
TBD	/	CLAIMANTS AND RESPONDENT	Simultaneous Cost Submissions
TBD	/	TRIBUNAL	Award

Procedural Order No. 1

ANNEX B

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked 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 i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to 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
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<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>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE

Procedural Order No. 1

	<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 Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<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>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<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>	