

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/20/44

**MR. NASIB HASANOV
(Claimant)**

v.

**GEORGIA
(Respondent)**

**DECISION ON CLAIMANT'S APPLICATION FOR
PROVISIONAL MEASURES**

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 Mowatt

June 14, 2022

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I. PROCEDURAL HISTORY

1. The Arbitral Tribunal (“**Tribunal**”) refers the Parties to the Tribunal’s “Decision on Respondent’s Inter-State Negotiation Objection” (April 19, 2022) and, in particular, to the identification of Party Representatives, Table of Selected Defined Terms, and paragraphs 1-40, which are incorporated as if fully set forth herein.
2. The Request for Arbitration, dated October 19, 2020 (“**Request**”), contained a “request for urgent provisional measures” at paragraphs 110-124 (“**Application**”).
3. The developments related to the Application through April 15, 2021 – including the Parties’ pleadings and correspondence related to the Application – are summarized in the Tribunal’s Procedural Order No. 3, dated April 15, 2021 (“**PO3**”).
4. PO3 addressed the pending Application and, in response to the Claimant’s request that a hearing on provisional measures be held as early as possible, noted that it was not feasible for the Tribunal to hold such a hearing prior to the one already scheduled for May 12, 2021. PO3 confirmed that oral submissions on both the provisional measures application and the bifurcated jurisdictional objection would be heard during the hearing (by video conference) on May 12, 2021.
5. PO3 further provided the following directions pending the Tribunal’s decision on the Application:

*19. In the period from this date until the Tribunal issues its final decision on the Application, the Tribunal issues the directions in paragraph 20, below, to the parties on the basis of the parties’ submissions to date, with a view to preventing the aggravation of the parties’ dispute, and **without forming any judgment whatsoever on the merits of the Application and the jurisdiction of this Tribunal.***

20. The Tribunal directs that the Respondent refrain from taking any of the steps listed in para. 143.1-3 of the Claimant’s submissions of January 12, 2021, including, in particular:

a) an undertaking that the GNCC will not suspend CO’s authorization to operate; and

b) an undertaking to allow that the governing bodies of CO exercise, without the Special Manager’s further approval, the list of activities requested by Mr. Teymur Taghiyev in his letter of January 11, 2021.

Each party is at liberty to apply for modification of these directions upon a showing of good cause.¹

6. Subsequently, on May 11, 2021, the Parties informed the Tribunal that they had reached a mutual agreement to postpone the May 12, 2021, hearing to provide an opportunity for the Parties to pursue settlement discussions, while reserving the “right of either Party to request that the hearing be rescheduled in the event they consider circumstances so require.” The Claimant confirmed by email of June 25, 2021, that the Parties were engaged in ongoing discussions and had agreed to the suspension of the procedural calendar.
7. On June 29, 2021, the Tribunal issued Procedural Order No. 4 (“**PO4**”), confirming the Tribunal’s approval of the suspension of the procedural calendar. The Parties were invited to provide an update concerning the status of their negotiations by September 1, 2021.
8. On July 26, 2021, the Claimant requested that the hearing on the bifurcated objection and provisional measures request be rescheduled. The hearing was subsequently rescheduled for November 23, 2021.
9. On November 5, 2021, in response to the Tribunal’s invitation to the Parties dated November 1, 2021, the Parties filed their respective comments on the Tribunal’s proposed Hearing timetable as well as their positions on further filings concerning the Application. The Tribunal issued directions on these matters dated November 8, 2021.
10. On November 11, 2021, the Claimant filed an “Update to its Request for Provisional Measures.”
11. On November 18, 2021, the Respondent filed its observations on the Claimant’s submission of November 11, 2021.
12. On November 19, 2021, the Respondent filed an application seeking an order that certain documentary exhibits be treated as confidential. The Claimant responded to

¹ Emphasis in original.

the application on November 22, 2021, and the Tribunal's decision on the application was issued later that day, November 22, 2021.

13. On November 23, 2021, the Tribunal held a hearing on provisional measures and the bifurcated jurisdictional objection by video conference ("**Hearing**").²
14. At the conclusion of the Hearing (Tr., p. 177), the Tribunal informed the Parties that until it issues its decision on the Application, "PO3, with its provisions, remains in effect." By letter dated November 24, 2021, the Secretary of the Tribunal informed the Parties that "the Tribunal has asked me to reiterate for the avoidance of doubt that, pending the Tribunal's further decision on the request for provisional measures, paragraph 19 of the Tribunal's Procedural Order 3 remains in effect."

II. THE PARTIES' POSITIONS

15. The Tribunal summarizes, in this section, the Parties' respective positions on the Application. While the Tribunal has carefully considered all written and oral submissions, documentary evidence, and legal authorities presented by both Parties, this summary is intended as a general description. In the following section, "Analysis and Decision," the Tribunal addresses the specific points that the Parties have adduced in making their respective cases on each element of the provisional measures standard.

A. The Claimant's Position

16. In his Request, the Claimant asks the Tribunal to order the following provisional measures (the "**Requested Measures**"): ³
 - a. Staying the making or execution of administrative decisions by the Georgian National Communications Commission ("**GNCC**") including the suspension of Caucasus Online LLC's ("**CO**") authorization to operate;

² All transcript references ("**Tr., p ...**") are to the transcript of the November 23, 2021, Hearing, as corrected further to the agreement of the parties.

³ Request, paras. 115, 123.

- b. Restricting the taking of adverse steps against CO by the “Special Manager” (at that time, Ms. Mariam Sulaberidze), appointed by GNCC;
- c. Preventing prejudicial interference by the Government, the GNCC or the Special Manager in CO’s business and management; and
- d. Directing the Government to forebear taking steps to escalate the present dispute until the arbitration’s conclusion.

17. The Claimant subsequently reformulated the Requested Measures in his “Response in Support of his Request for Provisional Measures,” dated 12 January 2021 (“**Cl. Response**”):⁴

143.1 Staying the making or execution of any administrative decisions by the GNCC in respect of CO, including (specifically but non-exclusively) decisions that: (i) would have the effect of suspending or would lead to the suspension of CO’s authorisation to operate; (ii) impose further sanctions against CO for its alleged breaches (in dispute in these proceedings) of the Communication Law, the 2016 GNCC Decision and/or the 2019 GNCC Decision; and/or (iii) are designed to procure and/or may directly or indirectly lead to the forced reversal of the Transaction;

143.2 Proscribing the Special Manager from exercising any of the powers conferred on her in respect of CO by the 1 October 2020 Decision, including (specifically but non-exclusively) by taking any measures (by action or inaction) that: (i) are adverse to CO; (ii) interfere in or obstruct the day-to-day management and business activities of CO; and/or (iii) are designed to procure and/or may directly or indirectly lead to the forced reversal of the Transaction; and

143.3 Ordering that the Special Manager approve the request made by Mr Teymur Taghiyev, a director of Nelgado Limited, in his letter dated 11 January 2021,⁵ that CO’s governing bodies (its director, supervisory board and shareholders) be empowered to carry out the managerial activities listed in that letter.

18. The Claimant submits that in July 2020, Georgia passed Amendments to the Communications Law with the purpose of specifically targeting CO and enabling GNCC to take over control of the company through the appointment of a Special Manager, which occurred on October 1, 2021. The Respondent’s plan was that the Special Manager would then use her “unlawful and excessive powers” to take “adverse

⁴ Cl. Response, paras. 89; 143.

⁵ Exhibit C-41 (footnote reference is in the original).

steps in relation to the business of CO in order to coerce the Claimant into returning” his shares and thereby reversing the Transaction: the “very existence of that constant threat is in and of itself a significant impairment of Claimant’s investment and may drive it into bankruptcy.”⁶ Under the Communications Law, the Respondent could have undertaken a competition assessment of the Transaction,⁷ but it instead decided to pursue the most intrusive option by appointing such a Special Manager, who was and is not independent from the GNCC.⁸ The Special Manager’s partiality was demonstrated soon after the Request was filed, by, for example, her making CO’s commercially sensitive information available to the Georgian Government and/or the GNCC, and her obstruction of CO’s business operations.⁹

19. Above all, according to the Claimant, the Respondent has threatened to suspend CO’s license to operate, which would “entirely destroy CO as a going concern.”¹⁰

20. The Tribunal may recommend provisional measures pursuant to Article 47 of the ICSID Convention, and Rule 39(1) and (5) of the ICSID Arbitration Rules. Provisional measures may be recommended in circumstances where: (i) the Tribunal has *prima facie* jurisdiction; (ii) the measures are intended to preserve the rights the protection of which has been sought; (iii) the measures are urgent; and (iv) they are necessary to preserve the *status quo* or avoid irreparable harm.¹¹ The Claimant also

⁶ Request, para. 37; Cl. Response, para. 6-7. The “**Transaction**” is the Claimant’s acquisition of his investment in CO in January 2019.

⁷ See Tr., p. 74.

⁸ Cl. Response, paras. 31, 34.

⁹ Cl. Response, paras. 40-50. The Claimant states (Request, paras. 111-112) that pursuant to the GNCC’s decision by which she was appointed, the Special Manager has the remit to ensure the restoration of CO’s shareholding that existed before the Transaction. However, CO has no power to effect the transfer of shares in its parent company. Thus, the Special Manager has been appointed “for a stated purpose that she cannot legitimately achieve.” The GNCC has granted her powers that go beyond “her purported authority to effect the reversal of the Transaction”: *e.g.*, restricting distributions to shareholders; invalidating previous management decisions; requiring her own involvement in certain management decisions; and engaging third parties to perform due diligence on CO.

¹⁰ Request, para. 114.

¹¹ Request, paras. 117-118.

contends that in this case the Requested measures are narrow and specific and would not impermissibly improve the Claimant's situation.¹²

21. The Claimant argues that the facts set out in his Request and Cl. Response are sufficient to establish *prima facie* jurisdiction.¹³ The Claimant relies on *Pey Casado v. Chile* for the proposition that what must be demonstrated of the purposes of provisional measures is “the *prima facie* existence of jurisdiction, or, to couch this in negative terms, the absence of a clear lack of jurisdiction.”¹⁴ The threshold for a showing *prima facie* jurisdiction is, therefore, “extremely low,” and the Claimant has met it.¹⁵
22. The Claimant is an Azerbaijani national and the ultimate beneficial owner of CO. He therefore satisfies the “investor” and nationality requirements of the BIT and the ICSID Convention. He also holds a qualifying investment under the BIT and his legal dispute with Georgia arises out of that investment, satisfying Article 25(1) of the ICSID Convention. The Parties have consented to ICSID arbitration pursuant to Article 9 of the BIT.¹⁶ In light of the context, purpose and object of the BIT, Article 9(1) must be interpreted as requiring prior negotiations between the Claimant and Respondent – and not between the Governments of Azerbaijan and Georgia.¹⁷
23. Regarding the Respondent's argument that Art 9(1) of the Treaty requires prior negotiations between Georgia and Azerbaijan (“**Inter-State Negotiation Objection**”), the Claimant argues that the BIT must be interpreted as requiring prior negotiations between the investor and Georgia, which has been satisfied.¹⁸ A detailed summary of

¹² Cl. Response, para. 53.

¹³ Cl. Response, para. 60.

¹⁴ Cl. Response, para. 61; CLA-10.

¹⁵ Tr., p. 10.

¹⁶ Cl. Response, para. 62 ff.

¹⁷ Cl. Response, para. 64 ff.

¹⁸ Cl. Response, paras. 64 ff.

the Claimant's arguments regarding the Inter-State Negotiation Objection is set out in the Tribunal's April 19, 2022 Decision.¹⁹

24. As for the Respondent's argument concerning an alleged "fork-in-the-road" provision under Article 9(2) of the BIT, the mere existence of dispute settlement options does not automatically create a fork-in-the-road, which is confirmed by the authorities that the Claimant has submitted.²⁰ Even if the Tribunal were to find that the BIT contains a fork-in-the-road provision, it would not apply to the present case, because the Claimant has not submitted his BIT dispute to any other tribunal or court.²¹
25. Pursuant to the applicable legal test, the Claimant must show that the Requested Measures are urgently needed, which means that they cannot wait the outcome of an award on the merits, and there is a sufficient or probable risk that serious or grave harm will occur if the Requested Measures are not granted.²² The bar is not as high as Respondent portrays it, and the wording 'irreparable' used by several investment treaty tribunals does not mean that the harm cannot be otherwise repaired.²³
26. The Claimant states that he has shown that if the Requested Measures are not urgently granted, his investment will suffer irreparable harm and serious prejudice. During the Hearing the Claimant observed that:

for so long as the Special Manager is in place and for so long as there is the threat that the authorization to carry out business may be revoked, you will, I think, plainly appreciate that third parties are extremely reluctant to do business with Caucasus Online. The company needs to renew very substantial contracts with its major customers, and in the present circumstances of uncertainty, it cannot do so. . . . For so long as the Special Manager is in place, is controlling the operations of the company and there is the threat of license revocation, the company cannot secure the contracts that it needs to generate cash flow and to meet its debt obligations.

¹⁹ Decision on Respondent's Inter-State Negotiation Objection, April 19, 2022 (paras. 61-83)

²⁰ Tr., p. 10; CLA-95.

²¹ Tr., p. 12.

²² Cl. Response, para. 119; CLA-24.

²³ Tr., pp. 12-13.

The threat of license revocation and the Special Manager’s interference with the CO’s business are two distinct grounds for the Requested Measures and both are “properly necessary and appropriate for the grant of provisional relief.”²⁴

27. The Respondent’s challenge to the Claimant’s reliance on cases that involve claims for specific performance has no merit. The test that the harm should be serious and substantial applies independently of whether specific performance is sought.²⁵ In any event, the Claimant’s Application seeks the equivalent of specific performance.²⁶

28. Moreover, when a claimant seeks interim relief from a tribunal to prevent the non-aggravation of the dispute, as in this case, the measures requested are always urgent.²⁷

29. The Special Manager is blocking the day-to-day activities of CO, which is therefore unable to carry out its business plan, in plain violation of PO3.²⁸ By way of example, the Special Manager issued a power of attorney to CO’s director (Mr. Revaz Kopaladze), authorizing him to undertake a restricted set of activities. For actions not listed in the power of attorney, the prior written consent of the Special Manager is required. This means that CO’s director is subject to the constant supervision and effective right of veto of the Special Manager.²⁹ Further, the Special Manager has continued to deny CO its fundamental right to represent itself in legal proceedings.³⁰

30. The Venice Commission and the Director General on Rule of Law, both from the Council of Europe, have highlighted the harm that the Special Manager can cause. In

²⁴ Tr., pp. 37-41.

²⁵ Tr., p. 13.

²⁶ Tr., p. 14.

²⁷ Cl. Response, para. 92.

²⁸ As noted above, the Tribunal issued PO3 on April 15, 2021, which directed the Respondent to undertake that (i) the GNCC will not suspend CO’s authorization to operate; and (ii) to allow the governing bodies of CO to exercise a set of certain activities, without the Special Manager’s further approval. Tr., pp. 17-19; C-54.

²⁹ Cl. Update, paras. 13 ff.

³⁰ Cl. Update, paras. 24 ff.

March 2021, the Venice Commission considered the Special Manager's powers in view of the remit to reverse the Transaction and concluded that "it was neither legitimate nor was it proportional to put in place a special manager, and [it] violated the right to property under Article 1, protocol 1, of the ECHR."³¹

31. The Requested Measures are therefore urgent and cannot wait the final award on the merits.³² Such urgency, as noted above, is not undermined by the fact that the Claimant seeks monetary compensation: the possibility of monetary compensation on the merits "does not eliminate the need for provisional measures."³³

32. The Requested Measures are also necessary to preserve the *status quo* and prevent the dispute from being aggravated.³⁴ The preservation of the *status quo* is a self-standing procedural right also recognized by the ICSID Rules and several investment treaty tribunals.³⁵

33. The Claimant has the right to preserve his substantive rights and, in particular, his right to indirect ownership and control of CO, which have been prejudiced by the GNCC and the Special Manager.³⁶ In fact, while the Special Manager was appointed with the sole purpose of reversing the Transaction by which the Claimant acquired his ownership in CO,³⁷ she is now improperly managing CO and exercising powers that are interfering with the business of the company.³⁸

³¹ Tr., pp. 23-24; C-44.

³² Cl. Response, paras. 91 ff.

³³ Cl. Response, paras. 98 ff.

³⁴ Cl. Response, paras. 131 ff.

³⁵ Tr., p. 24; CLA-45; RL-13.

³⁶ Tr., p. 25.

³⁷ C-34.

³⁸ Tr., p. 29.

34. The Respondent is incorrect in asserting that if the Requested Measures are granted, the Claimant's position would be impermissibly improved. The Claimant is seeking preservation of the *status quo* of the dispute and not a ruling from the Tribunal on the legality of the Transaction and his investment.³⁹
35. Contrary to the Respondent's assertion, the Claimant is not required to show that if the Requested Measures are denied the resolution of the dispute would be rendered more difficult. The Respondent relies on one case to support this assertion. However, most tribunals have found that, generally, provisional measures are justified when they prevent the dispute from being aggravated.⁴⁰
36. The Requested Measures are narrow and specific. In citing cases in which tribunals rejected certain provisional measures because they were too broad, the Respondent failed to identify the principle behind such rejections. An application for provisional measures is rejected if neither the respondent nor the tribunal can determine with precision the scope of the measures. In the present case, however, the Claimant has described with precision the actions that the Respondent would be prohibited from taking.⁴¹
37. Finally, during the Hearing, the Claimant explained that the Tbilisi Court of Appeals suspended the imposition of the Special Manager on the grounds that the Special Manager was likely to cause irreparable harm to CO. The Respondent refused to accept the non-appealable decision of its own Court and brought a revision procedure based on alleged newly discovered evidence. But there was no such evidence. The State and the GNCC manipulated their judiciary and obtained a reversal of the Court of Appeals' judgment.

³⁹ Tr., p. 26.

⁴⁰ Tr., pp. 32-33.

⁴¹ See also Claimant's Requested Measures as reformulated, Cl. Response, para. 143.

38. The Claimant seeks the costs of the arbitral proceedings (but has not expressed requested the costs of the Application).

B. The Respondent's Position

39. The Respondent contends that the Claimant is seeking the Requested Measures to take control over CO in plain violation of Georgian law and the regulator's orders, especially when the so-called investment was not made in accordance with Georgian law.⁴² If the Tribunal were to award the Requested Measures, the Claimant would be granted rights – such as control over strategic infrastructure in Georgia – that he does not have, even if the Claimant were ultimately to prevail on the merits of this arbitration.⁴³

40. The Requested Measures should not be granted because the Claimant has failed: (i) to establish a *prima facie* case on jurisdiction; (ii) to overcome the high bar of showing that the Requested Measures are urgently needed to avoid irreparable harm; (iii) to demonstrate that the Requested Measures are necessary to preserve the *status quo* and prevent the dispute from being aggravated; and (iv) to show that the Requested Measures are narrow and specific.

41. The provisional measures that the Claimant seeks are extraordinary measures and require exceptional circumstances. Not only has the Claimant failed to demonstrate that exceptional circumstances exist, but he has also failed to establish a *prima facie* case on jurisdiction.

42. Pursuant to Article 9(1) of the BIT, the Governments of Azerbaijan and Georgia should have engaged in negotiations before the Claimant resorted to ICSID arbitration. Since there were no negotiations between Georgia and the Republic of

⁴² Respondent's Observations on Claimant's Request for Provisional Measures dated December 21, 2020 ("**Resp. Observations**"), para. 8; Tr., p. 42.

⁴³ Tr., p. 47.

Azerbaijan before the commencement of the arbitration, the Claimant has not established *prima facie* jurisdiction.⁴⁴

43. Further, contrary to the Claimant's position, the Claimant's briefs are not sufficient to establish a *prima facie* case for the Requested Measures. The BIT only protects assets invested in accordance with the laws of Georgia, and the Claimant's purported investment was made in violation of Georgian law. The Respondent has never accepted and does not accept that the Claimant is the ultimate beneficial owner of CO. Thus, at "a minimum, the fact that Respondent has reserved its right to raise serious jurisdictional objections needs to be taken into account by the Tribunal" in deciding whether or not the alleged urgency requires the Tribunal to defer consideration of the provisional measures until after the question of jurisdiction has been decided.⁴⁵

44. Moreover, the fork-in-the-road provision in Article 9(2) of the BIT bars the Claimant from seeking the Requested Measures because the Claimant submitted a request for suspending the execution of the GNCC decision to the Georgian Courts. The 2019 GNCC Decision, which the Claimant previously submitted to the Georgian Courts, forms a fundamental basis of the Claimant's treaty claims.⁴⁶ The Claimant should be precluded from making duplicative requests for relief.

45. The Requested Measures are wholly disproportionate, and the Claimant has not met his burden of showing that the Requested Measures are urgent and necessary to prevent irreparable harm.⁴⁷ The Claimant should have demonstrated that the harm he is allegedly likely to incur if the Requested Measures are not granted cannot be compensated by monetary damages. Numerous authorities – including those relied upon by the Claimant – have confirmed that provisional measures can only be granted

⁴⁴ A detailed summary of the Respondent's arguments in this regard is included in the Decision on the Inter-State Negotiation Objection (paras. 41-60).

⁴⁵ Resp. Reply, para. 104 ff; RL-7.

⁴⁶ Resp. Reply, para. 98 ff.

⁴⁷ Tr., p. 56.

if there is harm that cannot be repaired by an award of damages.⁴⁸ Several treaty tribunals have rejected provisional measures requests by investors whose local companies were placed under state administration; these requests, like the Claimant's, "did not satisfy the necessity requirement because any harm that the Claimant may suffer could be remedied by damages."⁴⁹

46. At present, there is no risk that the GNCC will suspend CO's license to operate within the Georgian telecommunications market, as alleged by the Claimant, because such a suspension would negatively affect the Georgian internet and telecommunications market ("including substantial harm to more than 2.5 million internet subscribers and more than 300 public agencies whose internet supply depends on CO, to stability and cost of internet services, and to internet transit to Armenia"). The Respondent notes that as "recorded in the GNCC's Decision on the Appointment of the Special Manager, the GNCC appointed a Special Manager for CO precisely to avoid this harm by allowing CO to continue to operate in compliance with Georgian law."⁵⁰

47. As for the request to proscribe the Special Manager from exercising her powers, the Respondent comments that the Claimant has not only failed to prove the urgency of such a measure, but he has also failed to show that the Special Manager has exercised her powers improperly and with the sole purpose of damaging CO and obstructing CO's day-to-day business.⁵¹

48. The Special Manager granted CO's management residual freedom in the conduct of the company's day-to-day business operations by issuing a power of attorney to CO's director. Although the Special Manager's approval is required for certain payments and transactions not included in the power of attorney, the Claimant has failed to show

⁴⁸ See, e.g., RL-3; RL-5; RL-6; RL-13; RL-14; RL-42; RL-43; RL-44; RL-45; RL-46; CLA-9; CLA-39.

⁴⁹ Resp. Reply, para. 142 ff; Tr., p. 56.

⁵⁰ Resp. Observations, para. 76 ff; C-34; R-1; Respondent's Response to Claimant's Update to its Request for Provisional Measures dated 18 November 2021 ("**Resp. Response**"), para. 4 ff.

⁵¹ Resp. Reply, para. 160 ff; Resp. Response, para. 11 ff.

how this would harm CO or pose a threat to CO as a going concern. The Claimant cannot show that the few instances in which the Special Manager has withheld approvals have created any threat to CO's continued existence.⁵² Further, the Special Manager has continued to facilitate CO's operations by approving the conclusion by CO of numerous contracts for the provision of services, the expansion and improvement of CO's infrastructure, and the increase of its transit capacity.⁵³

49. The Claimant has not presented sufficient evidence to substantiate his allegations that the Special Manager would act in a partial manner and cause serious harm to CO. The Special Manager was appointed in accordance with the relevant regulations and because of the Claimant's refusal to comply with Georgian law.⁵⁴ It is simply irrelevant that the Special Manager is a former employee of the GNCC and once applied to become a GNCC Board member.⁵⁵

50. The mere fact that the Special Manager may exercise all or some of the powers granted to her – which were specifically designed to prevent the Claimant from continuing to violate the Georgian law – does not justify the issuance of the Requested Measures.⁵⁶ Further, since her appointment the Special Manager has always acted in the best interests of CO and has exercised her powers properly.⁵⁷ Accordingly, the Claimant's allegations are nothing more than speculative.⁵⁸

51. As for the Claimant's request that CO be provided with powers that can be exercised without the Special Manager's approval, this is an attempt to circumvent and interfere

⁵² Tr. pp. 67-69; C-47.

⁵³ Resp. Response, para. 11.

⁵⁴ Resp. Reply, para. 37 ff.

⁵⁵ Resp. Reply, para. 47.

⁵⁶ Resp. Reply, para. 44.

⁵⁷ Tr., p. 69.

⁵⁸ Resp. Observations, para. 78 ff.

with the Special Manager's powers. If this request were granted, the Claimant would have the opportunity to take unlawful measures, in blatant violation of Georgian law.⁵⁹

52. For more than two years the Claimant has applied to Georgian courts requesting interim relief, and the Georgian Courts have repeatedly found that a stay of the 2019 GNCC decision is not warranted.⁶⁰

53. The Requested Measures do not aim at preserving the *status quo*. Rather, the Requested Measures would alter the *status quo* in the Claimant's favor, and if the Tribunal were to award them, the Claimant's position would be impermissibly improved. The Claimant would be granted rights that he does not have under either Georgian law or the BIT. The "status quo is that Claimant's putative investment in CO has not even been admitted." If the Requested Measures were granted, not only

*would Claimant be treated as if the GNCC actually approved his attempted takeover, but Claimant could control CO free of any regulatory supervision or constraint. Respondent, by contrast, would be stripped of its regulatory powers over critical infrastructure to Georgia and deprived of its ability to develop into the region's primary digital hub.*⁶¹

54. As explained by an ICSID tribunal, the non-aggravation of the dispute must be related to the specific issues in the arbitration, which are defined by the Claimant's claims and requests for relief.⁶² Thus, in this case, the right to non-aggravation must relate to the Claimant's claim for monetary compensation. However, the Requested Measures as formulated by the Claimant do not relate to his claim, but are intended to enable the Claimant benefit from the investment he has made, even when this investment has violated Georgian law.⁶³

⁵⁹ Resp. Reply, para. 176 ff.

⁶⁰ Tr., p. 69.

⁶¹ Resp. Observations, para. 86 ff; Tr., p. 58.

⁶² *Ipek Investment v. Turkey*, Procedural Order No. 5 (CLA-30).

⁶³ Resp. Reply, para. 183 ff.

55. The right to maintain the *status quo* and the principle of non-aggravation of the dispute refer to actions that would make the resolution of the dispute more difficult. This right does not extend to any action that may aggravate the dispute, as the Claimant argues.⁶⁴
56. Finally, the Requested Measures are not narrow and specific, as they must be.⁶⁵ In his Response, the Claimant reformulated his Requested Measures. However, in doing so, the Claimant has only broadened the Requested Measures, rather than specified or narrowed them. As reformulated, the Requested Measures extend to any GNCC decision and do not specify the nature of the “further sanctions” that would be covered. The reformulated measures seem to consider all powers conferred on the Special Manager to be adverse to CO. The new request that CO’s governing bodies be empowered to carry out managerial activities listed in Mr. Taghiyev’s letter is “a blatant attempt to have the Tribunal confer on Claimant, through the management he installed at CO, far-reaching powers that he does not have under Georgian law or the BIT, including, but not limited to, entering into and terminating any commercial agreement, appointing and dismissing CO’s CEO and supervisory board members, and even introducing amendments to CO’s charter, effectively allowing him to neutralize the Special Manager’s powers” (emphasis in the original).⁶⁶
57. The Respondent requests that the Claimant’s Application be denied and that the Claimant be ordered to pay the full costs arising out of the Application.

III. ANALYSIS AND DECISION

58. The issue that the Application raises for resolution is twofold: (i) whether there is an ongoing threat to CO of license revocation or suspension for which the Claimant is entitled to provisional relief,⁶⁷ and (ii) whether the appointment of the Special Manager

⁶⁴ Resp. Reply, para. 190 citing RL-5.

⁶⁵ RL-3; RL-8; RL-9; RL-10; RL-11; RL-12.

⁶⁶ Resp. Reply, para. 114 ff (in particular, paras. 114-122).

⁶⁷ This ground equates to the Claimant’s “First measure,” as expressed in Cl. “Hearing on Provisional Measures Slides” (November 23, 2021) (“**Cl. Slide(s)**”) Slide 39, and Cl. Response (January 12, 2021), para. 143.1.

pursuant to the GNCC's list of regulatory powers would cause CO to cease to exist as a viable business, therefore justifying provisional relief.⁶⁸ The Claimant acknowledges that these are "two distinct grounds" upon which they request relief in the form of provisional measures, though he contends that "relief which is only cast in terms of enjoining Georgia from revoking the license would not preserve the value of the [Hasanov] investment pending" the Award. (*See* Tr., p 40.)⁶⁹

59. The Tribunal addresses these two grounds separately, in the context of the standard for provisional measures in an ICSID arbitration. While the Parties broadly agree on certain elements that constitute the standard and that the Claimant must establish such elements, they differ on the stringency of the elements as well as the overall standard.

60. Broadly then, under the frameworks presented by the Parties, the Tribunal may recommend provisional measures (ICSID Convention Article 47; ICSID Arbitration Rule 39) where (a) the Tribunal has *prima facie* jurisdiction over the Claimant's claim; (b) the measures would preserve the rights for which protection is sought; (c) the measures are urgent; (d) the measures are narrow and specific;⁷⁰ (e) the measures would preserve the *status quo* and prevent aggravation of the dispute, without impermissibly improving the Claimant's position; and (f) the measures are necessary to avoid irreparable harm.⁷¹ The Tribunal applies each element in assessing the two grounds of requested relief, taking into account the Parties' differing understandings of the elements.

⁶⁸ This ground equates to the Claimant's "Second measure" and "Third measure," Cl. Slide 39 and Cl. Response paras. 143.2 and 143.3.

⁶⁹ In effect, the Claimant requests that the temporary, provisional relief issued in PO3, covering all three measures and paragraphs 143.1, 143.2, and 143.3, be adopted as provisional measures to remain in place pending the issuance of the final award in this arbitration.

⁷⁰ Although the Claimant does not accept this element as part of the provisional measures standard (Tr., p. 34), it nonetheless addresses it and argues that it has satisfied it if the Tribunal were to determine that the element should be considered.

⁷¹ The Respondent adds – and the Claimant disagrees – that the Claimant must show that if provisional measures are denied, the resolution of the dispute will be rendered more difficult.

A. The Question of License Revocation or Suspension

61. The Claimant contends that although “Respondent and the GNCC have been holding off on the ultimate threat of the withdrawal of the authorization to operate, that still hangs over us as a sword of Damocles and has a tremendous impact on the business” (Tr., p. 8). The GNCC has preserved its ability “to withdraw the authorization to operate” (Tr., p. 8). Accordingly, the Claimant seeks an order enjoining Georgia from revoking or suspending CO’s license to operate during the pendency of the arbitration. Absent such an order, third parties “will be extremely reluctant to do business” with CO (Tr., p. 37).⁷²

62. The Respondent objects that there “is nothing in the record that would suggest that there is” an “imminent threat to revoke CO’s authorisation to operate” (Tr., p. 95). Moreover, the GNCC “has made a firm decision not to revoke CO’s or not even to suspend CO’s authorization in light of the harm ..., very substantial harm that the revocation of CO’s authorization would cause for the Georgian telecommunications market.” The GNCC decided in 2020 that suspension “would deprive 40% of the Georgian wholesale internal market of internet access, which would in turn deprive more than 2.5 million internet subscribers and more than 300 public agencies of internet access. In addition, internet transit to neighbouring countries would be severely compromised” (Tr., pages 61-63).

(a) *Prima Facie Jurisdiction*

63. The principal jurisdictional challenge that the Claimant has had to overcome in seeking provisional measures is the Respondent’s inter-State negotiation objection. As

⁷² In the provisional relief sections in his written submissions, the Claimant addressed suspension of CO’s license to operate. The Claimant also discussed a request for an order enjoining revocation in his written submissions and in the Hearing, which the Respondent opposed both in its written submissions and in the Hearing. The Claimant explained, during the Hearing, *e.g.*, Tr., p. 90, that an order enjoining revocation of CO’s license to operate is included in his Application. The First measure, Cl. Response, at para. 143.1, further includes a bar against GNCC actions that “may directly or indirectly lead to the forced reversal of the Transaction.” The Claimant’s reformulation of his para. 143.1 request also refers to GNCC decisions “including (specifically but non-exclusively) decisions that would have the effect of suspending or would lead to the suspension of CO’s authorization to operate ...”. As discussed below, under ICSID Convention Article 47 and ICSID Arbitration Rule 39(3), the Tribunal is not bound by the Claimant’s formulation or reformulation of his provisional relief requests.

set out in the Tribunal's Decision of April 19, 2022, that objection no longer poses any barrier to the Application. However, the Respondent maintains other objections to the Tribunal's jurisdiction: *see, e.g.*, Resp. Observations, para. 60, which identifies its BIT-Article 1 objection to jurisdiction,⁷³ and Resp. Reply (February 5, 2021), paras. 98-103, which sets out its "fork-in-the-road" jurisdictional objection pursuant to BIT Article 9. During the Hearing,⁷⁴ the Respondent argued at some length that the Claimant failed to meet the Georgia's "admission requirements" for an investment, as required by Article 1 the BIT. The Respondent submits, *inter alia*, that the Claimant secretly took control of CO in January 2019 and never obtained prior approval by the GNCC, as required by Georgian law.

64. The Claimant disputes the "admission requirements" objection and the Respondent's "fork-in-the-road" objection.⁷⁵ The Tribunal observes that these jurisdictional challenges will involve a full examination of facts and law in the merits phase of this arbitration. The Tribunal also considers the Claimant to be correct in submitting that the *prima facie* jurisdictional test does not set a high bar.⁷⁶ At this stage of the proceedings then, and for the purposes of his Application, the Claimant has presented a *prima facie* basis for BIT jurisdiction on the issues of "investor" and "investment" under the BIT (Article 1(1) and Article 1(2)), as well as "fork-in-the-road."⁷⁷ Of primary importance, as noted above, the Claimant prevailed on the inter-State negotiation objection, which, unlike the other jurisdictional objections that the Respondent has raised, was ripe for consideration.

⁷³ Resp. Observations (December 21, 2020), para. 60: "Respondent will raise substantial jurisdictional objections at the appropriate stage of the proceedings." Article 1(1) of the BIT provides for protection of investments made "in accordance with the laws in force in" the host State.

⁷⁴ Hearing – "Georgia's Statement on Provisional Measures Slides" ("**Resp. Slide(s)**") 2-16; Tr., pp. 41-46.

⁷⁵ *See, e.g.*, Cl. Response, paras. 15-26; Cl. Slides 8-9.

⁷⁶ *See, e.g.*, Cl. Response, paras. 60-62, citing CLA-9 (*Gerald International v. Sierra Leone*) and CLA-10 (*Victor Pey Casado v. Chile*).

⁷⁷ Cl. Response, para. 62; Tr., pp. 10-12; Cl. Slides 8-9.

65. For these reasons, the Tribunal determines that the Claimant has satisfied the *prima facie* jurisdictional element of the provisional measures standard.⁷⁸ The Tribunal emphasizes that this *prima facie* determination has no bearing on its later assessment of the Respondent's Article 1 and fork-in-the-road challenges, which the Parties are expected to address comprehensively in the merits phase.

(b) Preserving the Rights for Which Protection Is Sought

66. The Tribunal considers that an order enjoining Georgia from suspending or revoking CO's license during the pendency of the arbitration, or enjoining Georgia from seeking to reverse the Transaction, would entail protection of the Claimant's asserted ownership interest in CO. However, the Respondent argues that since the Claimant's underlying request for relief is a damages claim, "any harm that the Claimant may suffer could be remedied by damages" (Tr., p. 56.); thus, provisional measures directed to preserving an as asserted ownership right would be unjustified. Referring, in particular, to CLA-30 (*Ipek Investment v. Turkey*), CLA-39 (*Menzies v. Senegal*), and RL-3 (*Plama v. Bulgaria*), the Respondent contends that many investment treaty tribunal decisions confirm that since the Claimant's requested measures "are neither necessary to protect any right to damages, claims he may suffer, nor to maintain the status quo," the measures must be rejected (Tr., pages 56-57).⁷⁹ The Respondent's overarching point derives from *Plama v. Bulgaria* (RL-3: Resp. slide 31): "the rights to be preserved by provisional measures are circumscribed by the requesting party's claims and requests for relief. They may be general rights, such as the rights to due process or the right not to have the dispute aggravated, but those general rights must be related to the specific disputes in arbitration, which, in turn, are defined by the Claimant's claims and requests for relief to date."

67. The Claimant's response is twofold (Tr., pages 13-14; Cl. slides. 12-13). First, while specific performance is rarely sought in investment arbitration, provisional measures

⁷⁸ The Claimant has therefore also satisfied this element for his second ground of requested provisional relief, relating to the appointment of the Special Manager.

⁷⁹ CLA-30 is *Ipek Investment v. Turkey*; CLA-39 is *Menzies v. Senegal*; see also Resp. Slides 31-34.

are not rare. Tribunals have “often granted provisional measures when specific performance was not either any of the relief or the main relief, and where damages were sought as an equivalent.” Second, in this case the Claimant “has sought the functional equivalent of specific performance”: “[i]n our Notice of Dispute on June 22nd 2020, C-26, we indicated that we would be seeking *restituto in integrum*. In the end, when we formulated the claim, Claimant asked for a declaration of rights.” The Claimant adds that if the declaration is granted, the Respondent will be bound to abide by the award, pursuant to Article 53(1) of the ICSID Convention.

68. In the Tribunal’s view, the *Plama v. Bulgaria* passage relied on by the Respondent does not set a rigid, formalistic constraint on the acceptability of provisional measures in investment treaty arbitration. Rather, the *Plama* tribunal simply observes that the rights to be protected by provisional measures must be related to the specific disputes in the arbitration, which in turn derive from a Party’s claims as well as its requests for relief. Whether a Party only or principally seeks damages as its relief does not foreclose the possibility that the Party’s claims may involve certain rights that are the subject of specific disputes in the arbitration, and which arguably may come under threat. In that event, if the provisional measures being requested would protect such rights, a tribunal may determine that this element of the provisional measures test has been satisfied.
69. In the present arbitration, as noted above, it is specifically disputed whether the Claimant is entitled to his asserted ownership of CO. A provisional measure that would prohibit revocation or suspension of CO’s operating license (and/or reversal of the Transaction) pending the final award clearly would protect the ownership right that Mr. Hasanov asserts in CO, which is at the heart of the claims in dispute in this arbitration, leaving aside whether the declarations sought by the Claimant are the functional equivalent of specific performance. On this basis, the Tribunal finds that the first provisional measure ground requested by the Claimant (*i.e.*, para. 143.1) would preserve a right that is related to a specific dispute in this arbitration; therefore the Claimant has therefore satisfied this element of the provisional measures standard.

(c) *Urgency*

70. The Claimant cites the urgency standard adopted in CLA-24 (*Biwater Gauff v. Tanzania*), where the tribunal quoted C. Schreuer, The ICSID Convention, p. 751: “it is clear that provisional measures will only be appropriate where a question cannot await the outcome of the award on the merits.”⁸⁰ The Respondent chiefly relies on the standard expressed in RL-6 (*Occidental v. Ecuador*) and CLA-31 (*Rizzani de Echer v. Kuwait*) (Resp. slide 41): “Provisional measures are not meant to protect against any potential or hypothetical harm susceptible to result from uncertain actions. Rather, they are meant to protect the requesting party from imminent harm” (RL-6).⁸¹
71. The Claimant insists (Tr., pages 15-16) that “imminent” simply means that something is not purely hypothetical and speculative; “it means it could be happening soon. So if it’s happening before you issue your award, that’s imminent enough to make it necessary to issue provisional measures to protect the situation.” The Respondent contends (Tr., p.61) that the Claimant “has not established any risk of a suspension of CO’s authorization to operate, let alone an imminent one.”
72. The Tribunal sees no need to choose between the competing formulations of “urgency” presented by the Parties. The relevant question in the context of this arbitration is whether the Claimant has demonstrated that there would be a genuine risk of license revocation or suspension (or Transaction reversal) before the issuance of the final award on the merits, absent provisional relief from the Tribunal.
73. The Claimant’s answer is that the GNCC has never made a decision, “let alone a firm decision,” to not revoke CO’s license. Rather, the GNCC and Georgia have indicated that they would prefer not to revoke, but in at least two GNCC meetings (May 2020 and October 2021)⁸² “it was very clearly stated that that’s the only option that is left if they are unable to obtain the reversal through the Special Manager” (Tr., pages 75-76).

⁸⁰ Cl. Slide 15.

⁸¹ CLA-31 is to the same effect: “Further, in view of the twin requirements of urgency and necessity, it must follow that the harm alleged by the requesting party must be “imminent,” and not “potential or “hypothetical.”

⁸² During the Hearing (Tr., pp. 76-77), the Claimant did not vigorously pursue its suggestion (Cl. Update, para. 32) that the possibility of license revocation was also discussed during the July 29, 2021, GNCC meeting.

The Claimant adds that revocation would “not permanently cut off all of the millions of people that are involved: the asset would just be put into some other entity. The company would go bankrupt, the State would take it over in bankruptcy, or the banks would take it over, and they would just simply destroy Mr. Hasanov’s investment.” When pressed during the Hearing (Tr., pages 91-92) on whether the Claimant can show that he will be *imminently* harmed absent a formal constraint from the Tribunal preventing revocation or suspension, the Claimant stated that the “GNCC has made it plain that it has no other recourse available to it in order to procure compliance with its decisions than revocation, and thus we must fear that revocation is an imminent possibility.” Since, there is a serious risk of revocation, “it’s neither here nor there whether there’s a third party out there who shares our concerns.”

74. The Respondent’s answer is, as stated above, that no risk exists (Tr., pages 95-96, 63-65). There is no imminent threat of revocation. According to the Respondent, the record suggests “that the GNCC has identified substantial harm [to Georgia from revocation], has put the Special Manager in place and will not proceed with the revocation.” The GNCC did consider suspension, not revocation, in the spring of 2020, but the October 1, 2020, decision (C-34: R-1) detailed the substantial harm to Georgia’s interests from suspension, and that is why the Special Manager was appointed. There is “not the slightest indication” that Georgia “would be planning to revoke CO’s authorization.” [REDACTED]

[REDACTED] The deadline of December 31, 2021, that was set at the October 15, 2021, meeting was simply to avoid the expiration of the statute of limitations and to provide an opportunity for settlement; it had nothing to do with a hope to revoke authorization to operate.

75. The Tribunal considers that while the GNCC assessed in 2020 that suspension would substantially harm Georgia’s interests, it is significant for provisional measures purposes, as the Claimant argues, that Georgia is unwilling to undertake that it shall not revoke or suspend CO’s authorization (or otherwise reverse the Transaction) during the pendency of this arbitration. In this context, the Tribunal credits the

Claimant's argument that there is a non-speculative risk that Georgia, if unconstrained by this Tribunal and appreciating that it may not be able to achieve Transaction reversal other than by revocation, may seek to implement a financial arrangement so that CO's core assets are maintained and consumers are protected, with the Claimant's purported investment having been removed. Although the GNCC decided not to revoke or suspend CO's authorization in 2020, it certainly contemplated that option. In short, it would be neither hypothetical nor speculative to consider that the GNCC (if unconstrained by a provisional measures) may again entertain that option and decide to implement it before a final award is issued in this arbitration.

76. The Tribunal concludes that the Claimant has demonstrated that there would be a genuine risk of license revocation or suspension (or Transaction reversal) before the issuance of the final award on the merits, absent provisional relief from the Tribunal.

(d) Narrow and Specific

77. The Claimant states (Tr., p. 34) that this is a non-element: the cases "do not speak of any requirement that measures be narrow or specific of the minimum necessary in the circumstances." He relies on RL-9 (Cl. slide-39, *PNG Sustainable Development v. Papua New Guinea*): "A tribunal, and the party defending the request for provisional measures, are able to clearly identify the measures, and ensure compliance therewith." The Respondent contends (Resp. Observations, paras. 65-70; Resp. Reply, 107-122) that investment treaty tribunals have consistently rejected "broad and general requests for provisional measures," and cites several cases affirming this proposition. The Respondent further asserts that Article 47 of the ICSID Convention, empowering tribunals to recommend provisional measures, is "an exception to the general principle of state sovereignty," and therefore ICSID tribunals should "recommend only the minimum steps necessary to meet the objectives of the Convention" (quoting RL-5, *Nova Group v. Romania*). The Respondent asserts that Claimant's reliance on *PNG v. Papua New Guinea* is misplaced, since that tribunal explained that overly broad requests, by their very nature, are inconsistent with the purpose of provisional relief.

78. While the Claimant maintains its position that “narrow and specific” is not a requirement, he adds (Tr., p. 34) that his requested measures are not overly broad or difficult to understand or police, “which are the considerations that have concerned tribunals in the past. They merely seek to protect the status quo, to prevent further aggravation of the dispute, to keep the business alive pending the determination of these proceedings.”
79. The Respondent (Resp. Reply, paras. 110-115; Resp. slide 18) points out that the Claimant’s request in para. 143.1, as reformulated (with the reformulated request being even broader than the original request), seeks a stay of the making of any administrative decision by the GNCC in respect of CO. The request includes vague as well as overly broad provisions. Thus, the “First measure” request (as well as the requested constraints on the Special Manager) would “place CO, a closely regulated company with a dominant market position that owns critical infrastructure, in a regulatory vacuum, allowing Claimant to control strategic infrastructure in Georgia as he deems fit” (Tr., p. 47).
80. The Tribunal notes that the Claimant accepts, pursuant to *PNG Sustainable v. Papua New Guinea*, that a provisional measure must be clearly identified by the Tribunal and the Respondent, such that compliance may be ensured. Accordingly, if the Tribunal considers that the Claimant’s stated need for provisional relief against the risk of revocation, suspension, and Transaction reversal is justified, the provisional measure must provide for clear identification of the enjoined action. A broad, general request could in principle be permissible, provided that it is necessary to protect the disputed right and is – pursuant to the reasoning in *Nova Group v. Romania* – the minimum step necessary to protect the disputed right.
81. The Claimant’s request in para. 143.1 (“First measure,” Cl. Slide 39) is, however, too general, too broad, and too vague to constitute a measure that provides a clear identification of the enjoined action, leaving aside the omission of a term expressly designating revocation. For example, the parenthetical, “(specifically but non-exclusively),” arguably enjoins *any* GNCC decision concerning CO, which obviously

covers much more ground than revocation, suspension, or Transaction reversal. The phrase “would lead to the suspension,” is vague, and it provides insufficient guidance to the Respondent as to what would be impermissible. The phrase, “may directly or indirectly lead to the forced reversal of the Transaction,” is, again, vague, and it provides insufficient guidance as to what would be impermissible.

82. Since the “First measure” (Cl. Response, para. 143.1) lacks the necessary specificity to provide clear guidance to the Respondent of the action to be enjoined, if the Tribunal were to determine that provisional measures are warranted to protect the Claimant’s asserted rights against the risk of revocation/suspension and Transaction reversal, the Tribunal would need to exercise its authority pursuant to ICSID Convention Article 47 and ICSID Arbitration Rule 39(3) to recommend measures other than those contained in the Claimant’s First measure. Indeed, the Claimant recognizes (Tr., p. 90) that it is within the Tribunal’s discretion “to formulate the relief in the way” that the Tribunal considers more precise. As currently written then, the Claimant’s First measure cannot be accepted as a provisional measure, as it is overly broad and vague.

83. A revision of the Claimant’s requested “First measure” (para.143.1 of Cl. Resp.) would read as follows:

- ***Pending the conclusion of this arbitration, the Respondent (including the GNCC and all other State entities) shall not revoke or suspend CO’s authorization to operate. Further, the Respondent shall not seek to restore the shareholding of CO that existed prior to the time that Claimant obtained a purported indirect 100 percent shareholding in CO. This provisional measure may be modified or withdrawn upon a showing of good cause.***

(e) *Preserving the Status Quo and Preventing Aggravation of the Dispute; Improving the Claimant’s Position*

84. The Claimant refers to the ICSID Explanatory Notes to ICSID Arbitration Rule 39 (CLA-45, Cl. Slide 29): “Article 47 of the Convention . . . is based on the principle that once a dispute is submitted to arbitration the parties should not take steps that might aggravate or extend their dispute, or prejudice the execution of the award.” In

relation to the question of preserving the *status quo*, the Claimant cites, *e.g.*, RL-6 (*Occidental v. Ecuador*, Cl. Slide 31), for the proposition that, where the ownership in a piece of property is in dispute, a provisional measure could be ordered “to require that the property not be sold or alienated before the final award of the arbitral tribunal. Such an order would preserve the *status quo* of the property, thus preserving the rights of the party in the property.” As for the question whether such an order would impermissibly improve the Claimant’s position, the Claimant further notes that the *Occidental v. Ecuador* tribunal stated (Cl. Slide 33) that “although a right might not yet have been recognized by the Tribunal, such a right may nonetheless be deserving of protection by way of provisional measures.” The Claimant disagrees with the Respondent’s position that provisional measures must be necessary to prevent actions that would make the resolution of the dispute in arbitration more difficult (Tr., pages 32-33). The Claimant states that this restrictive view was taken by the *Plama* tribunal and followed in *Nova Group*, but the prevailing approach is that provisional measures are justified where the actions to be restrained would cause “an aggravation of the dispute more generally, including because they would escalate or extend the dispute” (citing *Tokios Tokelés v. Ukraine*, Tr., p. 33, CLA-100, Cl. Slide 37).

85. The Respondent comments that in the *Occidental* case, the claimants sought specific performance. Since the Claimant in this arbitration only asserts a right to monetary compensation, that alleged right (the claim to damages) will not be jeopardized if the provisional measure request is rejected (Resp. Reply, para. 182, also citing RL-1, *Phoenix v. Czech Republic*). As the *Occidental* tribunal also observed, provisional measures must preserve the respective rights of either party (Resp. Reply, para. 186). Further the Claimant’s right to non-aggravation of the dispute must relate to his claim for monetary compensation (Resp. Reply, para. 183).

86. The Respondent’s alternative position is that even if the Claimant had asserted a right to restitutionary relief, the provisional measures request would have to be dismissed; provisional measures must preserve the rights at issue, not give the requesting party enjoyment of those rights before the final award. The requested measures in this case would give the Claimant full benefit of controlling CO by fiat, rather than preserving

his alleged right to do so (Resp. Reply, paras. 184-185). The Respondent quotes *Plama* (RL-3) (Resp. Reply, para. 189) for the proposition, followed by numerous tribunals, that “the right to non-aggravation of the dispute refers to actions which would make resolution of the dispute by the Tribunal more difficult.”⁸³ Also as *Nova Group* explained (Resp. Reply, para. 190), it would be inappropriate if “the simple step of initiating an ICSID claim” gave an investor “a sweeping right to freeze all circumstances as they then exist (perhaps for a period of years).” On the Claimant’s own case, the provisional measures would “reinstate his unlawful control of CO, not preserve the *status quo*” – which would impermissibly improve the Claimant’s situation. (Resp. Reply, para. 193).

87. The Tribunal considers that this composite element (*status quo*/aggravation of the dispute/impermissible improvement) has particular relevance to the Claimant’s requested Second and Third Measures, concerning the powers of the Special Manager (Cl. Slide 39). In terms of the requested First measure, it is clear that, as of the commencement date of the arbitration (October 19, 2020), the Claimant still held his purported indirect 100 percent shareholding in CO. The Special Manager’s appointment arose from that purported shareholding. The Claimant’s First measure (as modified by the Tribunal, above) would thus preserve the *status quo* by preserving the Claimant’s purported ownership rights, and would not improve the Claimant’s position from that when the arbitration was commenced. If the Respondent were able to revoke or suspend CO’s authorization or reverse the Transaction, it is apparent that the Parties’ dispute would be extended. The nature of the relief sought by the Claimant does not negate this adjudicative reality. While the *Plama* and *Nova Group* tribunals placed an additional wrinkle on “aggravation of the dispute” element, the Tribunal’s view is that the Claimant need not show that revocation or suspension or reversal of the Transaction would make the Tribunal’s resolution of the dispute more difficult –

⁸³ *Nova Group* (RL-5) is to the same effect: the claimant must demonstrate the “continuing events in the host State threaten to interfere unduly with the parties’ ability to present positions in the arbitration, or the tribunal’s ability to fashion meaningful relief at the close of the case.”

though, it appears to the Tribunal that such actions by the State would certainly add complications to the resolution of the dispute.

88. Finally, in view of the Respondent's position that it has firmly decided not to revoke or suspend CO's authorization, the Tribunal considers that the First measure does not in itself impose any disproportionate burden on the Respondent, though this question also needs to be considered in the context of the Claimant's requested Second and Third Measures (discussed below).

(f) Irreparable Harm

89. Relying again on *PNG Sustainable Development v. Papua New Guinea* (RL-9, Cl. Slide 11; see also Cl. Slides 12⁸⁴ and 14 for other cases that the Claimant relies on), the Claimant argues that "irreparable harm" requires a showing of a material risk of serious or grave damage, but not harm that is literally irreparable in the narrow common law sense of the term. The relative harm to be suffered by each party is also to be taken into account.

90. To the Respondent (Resp. Reply, paras. 125-137), which relies on *Metalclad v. Mexico* (RL-42) and a string of other investment treaty awards, "irreparable harm" means an injury "that cannot be made good by the subsequent payment of damages." Georgia argues that the relied on by the Claimant to dilute the high threshold posed by this element are mostly specific performance cases. Moreover, the Claimant does report that, in cases that he cites, the tribunals commented that there must be a high likelihood that the irreparable harm will occur and the harm must be imminent.

91. The Tribunal has already addressed the issues of imminent, genuine risk of revocation/suspension/Transaction reversal. The remaining issues raised by this element are the definition of irreparable harm and the balancing of potential harms. While in some contexts the availability of damages may negate the basis for provisional relief, the availability of damages is not dispositive, particularly when an issue in the case is whether a purported investment, which the State did not eliminate

⁸⁴ Cl. Slide 12 identifies cases in which, according to the Claimant, an underlying claim for specific performance was not required in order for provisional measures to be granted.

in advance of the arbitration, shall remain in place. In this sense, “irreparable harm” and preservation of the *status quo* are mirror images. As for the balancing of potential harms Georgia’s repeated statements that the GNCC has decided not to seek revocation or suspension because of the importance of CO’s ongoing operations to the State and its citizens would strongly indicate that Georgia would not be harmed in any significant way, if at all, by the adoption of the First measure (as modified by the Tribunal). The Respondent, in fact, has not identified any harm to Georgia from its being prevented to revoke or suspend CO’s license; it simply says (Tr., pages 62-63) that the Claimant must establish that the provisional measure is necessary and urgent. The Tribunal has already found that it is (as modified), precisely because the GNCC declines to undertake that it will not revoke or suspend CO’s license.

(g) *Conclusion – License Revocation/Suspension: The Claimant’s Request for Provisional Measures*

92. For the reasons discussed above, the Tribunal finds that, in relation to its First measure, concerning the issues of license revocation or suspension,⁸⁵ the Claimant has established the elements that compose the provisional measures standard, with one important exception: the Claimant’s proposed reformulated First measure is overly broad and vague. The Tribunal, exercising its authority under ICSID Convention 47 and ICSID Arbitration Rule 39(3), accordingly revises the First measure, as follows, and recommends this revised provisional measure be adhered to by the Parties –

Pending the conclusion of this arbitration, the Respondent (including the GNCC and all other State entities) shall not revoke or suspend CO’s authorization to operate. Further, the Respondent shall not seek to restore the shareholding of CO that existed prior to the time that Claimant obtained a purported indirect 100 percent shareholding in CO. This provisional measure may be modified or withdrawn upon a showing of good cause.

⁸⁵ The Claimant’s First measure, as noted above, includes a broader category concerning reversal of the Transaction (*i.e.*, restoration of CO’s shareholding prior to the Claimant’s purported investment). Although it is not specifically apparent how such reversal might be achieved, the Tribunal considers it appropriate that this category be included in a provisional measure that concerns a bar to the removal of the Claimant’s purported investment.

B. The Question of the Special Manager

93. The Claimant contends (Tr., pages 17-20) that unless the Second and Third measures are adopted by the Tribunal, CO will be prevented from carrying out its business plan to grow the company and the Claimant will be unable to “get a return on investment and survive and long-term finance itself.” The Claimant cites, by way of example, CO’s inability to negotiate properly with Amazon and the loss of a major contract with MagtiCom because of the Special Manager’s alleged interference and day-to-day blocking of company activities. The Claimant relies, in particular, on the Venice Commission’s review of the Special Manager’s powers (C-44, Cl. Slide 17⁸⁶), in view of her remit to reverse the Transaction, in which the Commission determined (Tr., p. 24) that the Special Manager’s role “violated the right to property under Article 1, Protocol 1, of the ECHR.” The Claimant asserts (Tr., pages 28-31) that the GNCC’s October 1, 2020, decision (C-34: Cl. Slide 34) meant, in effect, that the Special Manager “was only required to reverse the Transaction,” so that her further intention to operate CO in a way that she thinks is efficient is outside her remit (assuming that her appointment was valid, which the Claimant rejects).
94. The Respondent argues (Tr., p. 42) that the Special Manager is Georgia’s protection against the Claimant’s attempt to take control of CO in violation of Georgian law and to “use the company as a vehicle to carry out the Azerbaijan Digital Hub Project.” The Second measure, if granted, would place CO, a company that owns critical infrastructure, “in a regulatory vacuum,” and the Third measure “would effectively neutralize the powers of the Special Manager, given the breadth of the powers that would be vested in the management that Claimant installed in CO; in CO’s supervisory board, composed of members selected by Claimant; and CO’s shareholders’ meeting, composed of Nelgado and ION, each controlled by Claimant” (Tr., pages 47-48). The Second and Third measures, according to the Respondent, would preserve none of

⁸⁶ Joint Opinion of the Venice Commission and the Directorate of Human Rights and Rule of Law of the Council of Europe on the recent amendments to the Law on Electronic Communications and the Law on Broadcasting, paras. 29, 35, 36.

Georgia's rights and would instead strip Georgia of its regulatory powers over CO (Tr., p. 48).

(a) Prima Facie Jurisdiction

95. As discussed above, paragraph 65 footnote 78, the Claimant has satisfied this element of the provisional measures standard for his Second and Third measures requests as well as for his First measure request.

(b) Preserving the Rights for Which Protection Is Sought

96. As discussed above, paragraph 68, the rights to be protected by provisional measures must be related to the specific disputes in the arbitration, which in turn derive from a Party's claims as well as its requests for relief. However, the applicant's purported rights are not the only ones to be considered; the potential effect of the provisional measures on the Respondent's purported rights must also be part of the decisional matrix.

97. The Claimant requests the Second and Third measures to protect the value of his purported investment – for which he seeks damages or compensation in this arbitration⁸⁷ – and to proceed with the execution of CO's business plan, which the Claimant seeks to institute, presuming that his ownership interest is accepted, at least during the arbitration.⁸⁸ The Second measure (Cl. Response, para. 143.2; Cl. Slide 39) would proscribe the Special Manager from “exercising any of the powers conferred on her” by the October 1, 2020, GNCC Decision, including, specifically (but non-exclusively), actions that (i) are adverse to CO; (ii) interfere with CO's day-to-day management and business activities; and (iii) are designed to procure the forced reversal of the Transaction. The Third measure would order the Special Manager to approve a Nelgado director's (Mr. Taghiyev) request that CO's governing bodies be empowered to carry out an array of managerial activities.

⁸⁷ See Request, paras. 125-127.

⁸⁸ See Request, para. 108: The Special Managers' actions have “stymied CO's ability to complete the Digital Silk Road Project” and have created losses of “many millions of dollars.”

98. The Tribunal notes that, taken together, the Second and Third measures would completely erase the Special Manager's powers under the GNCC's October 1, 2020, Decision. The allegation is that unless these powers are removed, the Claimant will be prevented from enjoying the financial benefits he planned to derive from his purported investment (though, as pointed out above, the relief that the Claimant seeks in this arbitration is damages or compensation for the diminished value of his purported investment). The Claimant has not adduced (at least not at this stage) the particulars of CO's business plan, the further investments in CO that he planned to attract, and the revenue streams that he had projected for the company. The Claimant, instead, provides certain instances where, he alleges, the Special Manager has taken "detrimental actions towards CO" since her appointment and obstructed CO's business (*e.g.*, Cl. Slides 18-25). There is no quantitative assessment of the losses allegedly suffered by CO if the Special Manager acts pursuant to the powers accorded to her by the GNCC. In particular, there is no showing by the Claimant that the Special Manager, acting pursuant to the powers accorded to her, would destroy CO as a going concern (*see* Request, para. 122). On this basis, the Second and Third measures can only be said to possibly to lessen the amount of damages that the Claimant may be entitled to if he prevails on liability at the merits stage of this arbitration.

99. Georgia's rights, on the other hand, are based on its position that the Claimant's investment is illegal. It argues that its regulatory powers over CO – including, in particular, its capacity to preserve Georgia's ability to compete with the Azerbaijan Digital Hub project – will be eliminated if the Second and Third measures are adopted as provisional measures. The Bakcell Report (R-32, Resp. Slides 25-27), according to the Respondent, demonstrates that unless Georgia can exercise regulatory control – through the Special Manager – over CO for the pendency of this arbitration, Georgia's political economy is at serious risk of grave damage. Thus, the broad wording of the Second and Third measures, whereby the Special Manager would have no substantive powers, would eliminate a regulatory right that Georgia is entitled to have protected until the conclusion of this arbitration. This right would be eliminated in

circumstances where there has been no showing of a threat to CO's financial well-being.

100. The Respondent observes (Tr., p. 55) that even if the Claimant loses the arbitration, “the company would entirely change its strategy of provision of services and would change its strategic directions” – to the detriment of Georgia and in ways that Georgia could not correct “far beyond the completion of the arbitration.” The Respondent adds (Tr., p. 98) that “the lawfulness of the decision on the appointment of the Special Manager is one of the core issues in dispute in this case”; it is a merits issues that has not yet been briefed and should not be prejudged by the Tribunal.
101. The Tribunal finds the Claimant has identified a number of potential risks to CO's economic attainments from the appointment of the Special Manager (with the powers accorded to her by the GNCC).⁸⁹ Blocking the Special Manager's powers during the arbitration arguably may reduce the damages/compensation that the Claimant would otherwise seek to recover in a final award. From a related perspective, protection of the Claimant's purported ownership rights – which the Tribunal has granted through the revised First measure – would be of little value if the purported investment were at risk of dissolution and the Second and Third measures would preserve that investment. The record before the Tribunal, however, does not contain compelling evidence that the Special Manager's exercise of her October 1, 2020, powers would threaten CO as a going concern (*see* Tr., pages 96-102; Resp. November 18, 2021, Resp. Update Response, paras. 11-21). The thinness of the evidence of economic disruption due to the Special Manager's exercise of her powers must also be weighed against the Respondent's regulatory rights, and its specific right in this arbitration to have its position adjudicated – and not pre-judged – that the Claimant's investment was illegal and the Special Manager's appointment and powers were legal. The Tribunal's weighing of these issues leads it to conclude that the Second and Third

⁸⁹ The Tribunal also considers that the Respondent has persuasively rebutted certain allegations of disruption and obstruction caused by the Special Manager: *see, e.g.*, Respondent's Nov. 18, 2021, Response to Claimant's Update (“**Resp. Update Response**”), paras. 11-21. In particular, the Respondent has provided a detailed dissection of the Claimant's “Amazon” allegation (Cl. Update, para. 19.1) at Resp. Update Response, para. 14; *see also* Tr., pp. 97-98.

measures are not necessary to preservation of the rights for which protection is sought by the Claimant. Further, the Tribunal credits the Respondent’s argument concerning disproportionality (Tr., p. 103): “On the one hand, Claimant would suffer a compensable loss of a business opportunity: on the other hand, in a worst case scenario, Georgia would suffer very substantial economic harm, and potentially irreparable harm.”

(c) Urgency

102. Along the lines of the Tribunal’s discussion in paragraph 72, above, the relevant question under this heading is whether (a) the Claimant has demonstrated that there would be a genuine risk to CO as a going concern before the issuance of the final award, absent the Tribunal’s adoption of the Second and Third measures as recommended provisional measures, or (b) even absent a bankruptcy risk, has the Claimant established that the Special Manager would seek to act in with the purpose of damaging the economic wellbeing of CO.⁹⁰ As already considered in paragraph 101 above, the Tribunal finds that such a risk does not exist, and therefore the Claimant has not satisfied the urgency element.

(d) Narrow and Specific

103. The Second measure would, on its face, completely eliminate the Special Manager’s powers and, in effect, overrule the GNCC’s October 1, 2020 Decision for the duration of the arbitration. (The Third measure is a parallel provision whereby CO’s director, supervisory board and shareholders would be expressly authorized to manage the company and take decisions without seeking the Special Manager’s approval; see C-41, Letter from the Nelgado Director to the Special Manager, dated January 11, 2021.)

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104. While the Second and Third measures certainly convey clarity to the Respondent (and the Tribunal) about enjoined actions, the problem with these requested measures is that they would enjoin *all* actions; *i.e.*, these measures would nullify a regulatory decision of the State in its entirety; as the Respondent argues, this would effectively amount to a prejudgment that the Special Manager’s appointment was illegal. In circumstances where the Claimant has not sought to identify specific powers of the Special Manager that might arguably be enjoined as a provisional measure and would not amount to a prejudgment of illegality, the Tribunal considers that the clarity of the requested measures – an elimination of all powers of the Special Manager – is outweighed by the Claimant not having proposed the minimum step necessary to protect the disputed right. (See above, paragraph 80, including the reference to RL-5, *Nova Group v. Romania.*)

(e) *Preserving the Status Quo and Preventing Aggravation of the Dispute; Improving the Claimant’s Position*

105. The Claimant’s *status quo* difficulty is that the GNCC’s October 1, 2020 Decision, in which the Special Manager is accorded the powers that the Claimant seeks to block with the Second and Third measures, pre-dates the filing of the Request for Arbitration (October 19, 2020). As a practical matter, then, preserving the *status quo* would appear to entail preserving the Special Manager’s October 1 powers. The Claimant’s counter-argument focuses (C-34, C-44, C-57, Cl. Slides 17, 34-35, Tr., pages 29-31, 79-89) on the purpose of the Special Manager’s appointment (Cl. Slide 34) – “The Special Manager shall be in charge of ensuring restoration” of CO’s pre-acquisition shareholding, and shall exercise her powers with the “belief that each of her actions/omissions will best ensure the fulfillment” of the restoration obligation. On this basis, the Claimant asserts (Tr., p. 30) that the GNCC’s Decision does not give the Special Manager “a mandate” to operate CO or to interfere in its day-to-day management. Along these lines, by seeking to interfere in the company’s management (C-57, Cl. Slide 35), the Special Manager has misinterpreted her remit. Accordingly, (Tr., p. 31), to preserve the *status quo* would mean to prevent the Special Manager from exercising her powers and interfering in the business of the company.

106. The Claimant reiterates (Tr., pages 79-80) that the *status quo* was “a Special Manager in place with a remit to reverse the Transaction”; nothing more. For support, the Claimant refers to the Venice Commission (C-34), which found that the Special Manager Law violates the European Convention on Human Rights because “it gives powers that have nothing to do with the purported goal” – which, moreover, was a goal that the Special Manager could not achieve in any event. The Claimant rejects the notion (Tr., pages 82-84) that the Special Manager’s understanding of her powers, as expressed, *e.g.*, in R-79, has any bearing on what the GNCC actually authorized her to do; her actions are “simply not a legally protected right,” since she is “trying to do more” than her legal authorization would permit.
107. The Respondent’s *status quo* position focuses (Resp. Reply, paras. 187, 193-195) on “prejudgment”: *i.e.*, absent a finding that the Special Manager’s appointment was unlawful, the Special Manager has the power to manage CO. Thus, to grant the requested Second and Third measures would require the Tribunal to prejudge a merits issue. Further, as a factual matter, the appointment of the Special Manager was part of the *status quo* and the dispute submitted to the Tribunal – indeed, the Claimant’s own case is that he lost “all control over CO” by virtue of the October 1, 2020 GNCC Decision (Request, para. 89). To restore the Claimant’s unlawful (as the Respondent sees it) control over CO would be to “impermissibly improve Claimant’s situation” and to impose on Georgia the Claimant’s “attempted investment in CO as a *fait accompli*” (Resp. Reply, paras. 194-195).
108. The Tribunal cannot simply adopt, and at this stage of the arbitral proceedings takes no view on, the finding of the Venice Commission (C-44, Cl. Slide 17). The Tribunal has not heard full evidence and submissions on the proper interpretation under the applicable law of the GNCC’s October 1, 2020 Decision, and the alleged disjuncture between the Special Manager’s mandate and the powers accorded to her. The Tribunal observes that Special Manager Miriam Sulaberidze made the following comments in her Report (October 1, 2020 – February 28, 2021, R-79), which the Tribunal is not now in position to question:

My powers and mandate as a special manager are determined by the decision of the Commission. My main task and function is to enforce the decision of the Commission and to neutralize the risks set out in the decision of the Commission, in particular, as a result of illegal alienation of the share of Caucasus Online Ltd. Illegal alienation of shares must not threaten the competitive environment in the relevant segment of the Internet service delivery market in Georgia and must not harm the users of Internet services in Georgia and the regional competitiveness of Georgia.

During the reporting period, my main activities were to study the situation of the company in order to plan further decisions to implement the decision of the commission....

Every decision made by me was dictated by the belief and motives that it is the best decision for enforcing the Commission's decision. The main goal of my activities was distancing the person who illegally acquired the shares of Caucasus Online Ltd., as much as possible, from the company's activities and agreeing in advance with the existing management decisions of the company. As a Special Manager, I assisted the CEO of the company in the smooth running of the day-to-day operations of the company. During the reporting period, the company did not have any delays in its normal business activities. In addition, during the reporting period, I did not consent to any activities that were inconsistent with the decision of the Commission, the execution of which is the responsibility of the Special Manager. I did not consent to the following issues: [e.g., an MOU with certain companies, since CO was mentioned as a subsidiary of NEQSOL Group]....

109. The Tribunal's recommendation of the revised First measure prevents what the Claimant states that the Special Manager herself could not (and cannot) achieve, though the State might otherwise seek to achieve – the reversal of the Transaction. However, the Tribunal deems it inappropriate to consider whether, at this time, the Special Manager's determination "to neutralize the risks set out in the decision of the Commission, in particular, as a result of illegal alienation of the share of Caucasus Online Ltd." is improper and should therefore be enjoined, particularly since her determination was apparently the approach taken before this arbitration commenced. Further, when the Special Manager reports that the "main goal of my activities was distancing the person who illegally acquired the shares of Caucasus Online Ltd., as much as possible, from the company's activities," the Tribunal cannot now determine whether this approach constitutes action outside the Special Manager's mandate. The Special Manager's approach supports Georgia's position that, without the Special Manager's exercise of the powers accorded to her by the GNCC, Georgia will be

unable as a practical matter to preserve its challenge to the legality of the Claimant's purported investment and the implications of his disputed ownership interest.⁹¹

110. In view of the Tribunal's finding that (a) the Special Manager's powers predated the commencement of this arbitration, and (b) it would be inappropriate at this stage of the proceedings to adjudicate the Special Manager's legality in exercising those powers, the Tribunal considers that the *status quo* and "aggravation of the dispute" elements weigh in the Respondent's favor.

(f) Irreparable Harm

111. The Tribunal has found (see paragraph 101 above) that the Claimant has not adduced compelling evidence showing that the Special Manager's exercise of her October 1, 2020, powers would threaten CO as a going concern. See, for example, the Respondent's arguments (Tr., pages 67-68 and 97-98), which indicate that the Special Manager's exercise of her powers has not damaged CO. In considering the balance of harms, the Tribunal also credits the Respondent's contention (Tr., p. 48) that the Second and Third measures "would strip Georgia of its regulatory powers over CO, prohibit from addressing serious and deliberate violations of its laws, and cause it substantial and potentially irreparable harm." The Respondent adds (Tr., p. 103) that the Georgian courts "have identified that there is substantial harm to the Georgian telecommunications market in terms of competition, in terms of the risk of a change in strategy in a manner that would negatively affect retail subscribers and Georgian public agencies and, third, the harm to international competitiveness."

(g) Conclusion – The Special Manager: The Claimant's Request for Provisional Measures

112. For the above reasons, the Claimant's requested Second and Third measures (Cl. Response, paras. 143.2 and 143.3) do not satisfy the elements that compose the provisional measures standard. The Tribunal therefore declines to recommend these measures. Upon a showing of good cause, the Claimant is at liberty to apply for

⁹¹ See Tr., p. 99, where the Respondent states that the "powers conferred on the Special Manager allow the Special Manager to counteract any unlawful influence by the Claimant on CO's management and operations."

significantly more limited measures that would not, *inter alia*, entail a prejudgment of the legality of the GNCC's October 1, 2020, Decision.

**IV. RECOMMENDATION UNDER ICSID CONVENTION ARTICLE 47;
ICSID ARBITRATION RULE 39(3)**

113. The Claimant's requested First measure is recommended in revised form as follows:

Pending the conclusion of this arbitration, the Respondent (including the GNCC and all other State entities) shall not revoke or suspend CO's authorization to operate. Further, the Respondent shall not seek to restore the shareholding of CO that existed prior to the time that Claimant obtained a purported indirect 100 percent shareholding in CO. This provisional measure may be modified or withdrawn upon a showing of good cause.

114. The Claimant's requested Second and Third measures are denied. Upon a showing of good cause, the Claimant is at liberty to apply for significantly more limited measures that would not, *inter alia*, entail a prejudgment of the legality of the GNCC's October 1, 2020, Decision.

115. Costs are reserved.

[signed]

Stanimir Alexandrov
Arbitrator

[signed]

J. William Rowley
Arbitrator

[signed]

Laurence Shore
President of the Tribunal