

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Access Business Group LLC
Claimant

v.

United Mexican States
Respondent

(ICSID Case No. ARB/23/15)

PROCEDURAL ORDER NO. 4

ORGANIZATION OF THE HEARING ON JURISDICTION

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Prof. Franco Ferrari, Arbitrator

Ms. Loretta Malintoppi, Arbitrator

Secretary of the Tribunal

Mr. Francisco Abriani

Assistant to the Tribunal

Dr. David Khachvani

7 April 2025

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1. PROCEDURAL BACKGROUND

- 1.1. On 29 August 2024, the Tribunal issued Procedural Order No. 3, in which it ordered the bifurcation of the Respondent's two preliminary objections (the "**Preliminary Objections**") and the arbitration to proceed pursuant to Scenario 3 of the Procedural Timetable.
- 1.2. Pursuant to the Procedural Timetable, as amended on 26 September 2024, the Parties and the Tribunal have agreed to schedule a hearing on the Preliminary Objections on 14 April 2025, with 15 April held in reserve (the "**Hearing**").
- 1.3. On 18 March 2025, the Tribunal circulated a draft of this order for the Parties' comments.
- 1.4. On 26 March 2025, the Parties submitted their comments on the draft order, including their respective positions on the issues that remained outstanding.
- 1.5. This order sets out the rules that the Parties have agreed or the Tribunal has determined to govern the conduct of the Hearing.

2. HEARING FORMAT AND VIDEOCONFERENCE PLATFORM

- 2.1. The Hearing shall be conducted online using Zoom (the "**Hearing Platform**").
- 2.2. ICSID will administer the videoconference, and will provide a dedicated technician to assist during the Hearing. Mr. Francisco Abriani (fabriani@worldbank.org) and Pedro Magariño (pmagarino@worldbank.org) will act as the "**Hearing Managers**" and will, with the assistance of the technician, provide the Tribunal and the Parties administrative and technical support as described in the sections below.

3. PARTICIPANTS

- 3.1. The persons participating in the Hearing (the "**Participants**") and the locations from which they will be participating are set out in Annex I. Each Party may make changes to its list of Participants by amending Annex I and returning it to ICSID by 7 April 2025.

4. HEARING SCHEDULE AND TIME ALLOCATION

- 4.1. The Hearing shall take place on 14 and 15 April 2025. Each Hearing day shall start at 8:00 AM (Mexico City time) / 4 PM (Geneva time), and proceed until approximately 2 PM (Mexico City time) / 10 PM (Geneva time).
- 4.2. Each Party shall have 90 minutes maximum for an opening statement, and 30 minutes maximum to answer questions from the Tribunal at the end of the Hearing.
- 4.3. An indicative schedule of the Hearing (the “**Hearing Schedule**”) is set out in Annex II. The Tribunal may vary the Hearing Schedule if necessary, in particular due to delays or other interruptions caused by technical problems in the functioning of the videoconference facilities.
- 4.4. Each Party shall have **5 hours** of overall hearing time, including the time for the opening statement and answers to the questions of the Tribunal, as well as for the examination of witnesses and experts. Time spent in direct and re-direct examination shall be counted toward the time of the Party presenting the witness or expert. Time spent on cross-examination shall be counted toward the time of the Party conducting the cross-examination.
- 4.5. Time for dealing with objections from a Party shall not be counted against that Party’s time unless the Tribunal determines otherwise. Time used for housekeeping or to resolve technical difficulties shall not be counted against any Party’s time unless the Tribunal determines otherwise.
- 4.6. The Parties are expected to use the Hearing time efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the Hearing day or, in exceptional circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

- 4.7. The Secretary of the Tribunal shall keep a record of each Party's use of time in accordance with the chess clock method and report the total daily time used at the end of each Hearing day.

5. ADVANCE TESTING

- 5.1. The Hearing Managers will arrange for one or more trial videoconference(s) ("**Trial VC**") with all Participants who will join the Hearing from a different connection than during prior videoconferences held in this arbitration to test the connections.

- 5.2. For the Trial VC, Participants shall strive to replicate the conditions under which they will participate in the Hearing. In particular:

5.2.1. each Participant should join the Trial VC with the same device(s), headset/microphone set-up, and internet connection and from the same physical location that they intend to use for the Hearing;

5.2.2. Participants will join the Trial VC using the same procedure as for the Hearing itself (Section 6 below);

5.2.3. the Trial VCs shall include a test of each of the functions of Zoom that is intended to be used by the relevant Participants during the hearing (e.g., presentation of evidence via shared screen);

5.2.4. the Trial VCs shall include a test of the real time transcript.

- 5.3. In addition to the Trial VCs, at the Parties' request, the Hearing Managers may facilitate additional testing and training of the Hearing Platform for Participants, if useful to facilitate the readiness of all Participants for the Hearing.

6. ACCESS TO THE VIDEOCONFERENCE

- 6.1. The Hearing shall be closed to the public. However, the non-disputing State parties may attend the Hearing. ICSID shall inquire from the non-disputing State Parties whether they wish to attend the Hearing and advise the Parties and the Tribunal accordingly. To

facilitate access to the Hearing by representatives of the non-disputing State parties, ICSID will provide identified representatives with the Zoom access information; all such participants will be identified on the List of Participants.

- 6.2. Access to the Hearing will be password protected. The Hearing Managers shall circulate the log-in details for the videoconference to the Participants' email addresses identified in Annex I no later than two days prior to the start of the Hearing. Participants shall not forward or share the Hearing link or password. Access to the videoconference will be available via the same link throughout the Hearing.
- 6.3. All Participants shall join the videoconference at least 15 minutes in advance of the start of each Hearing day to facilitate the identification of Participants and early resolution of any technical difficulties.
- 6.4. Participants will join the videoconference through a "waiting room" to be managed by the Hearing Managers, with the assistance of the technician. In order to facilitate identification, Participants must join the videoconference showing a username that enables them to be readily identified and assigned to the appropriate breakout room (i.e., T (for Members of the Tribunal), C (for Claimant) or R (for Respondent) followed by first name and last name, e.g., "T – Gabrielle Kaufmann-Kohler"). Prospective Participants who cannot be identified shall not be granted access to the videoconference, unless otherwise decided by the Tribunal upon request of a Party.
- 6.5. Private breakout rooms (within the main videoconference) will be made available for the exclusive use of the Tribunal and each Party. The Parties will make use of the breakout room functions within the Hearing Platform to avoid delays associated with admission to the videoconference and to enable the Tribunal to reconvene promptly following breaks. Each Party may make separate arrangements for private communication with their respective teams during the Hearing by instant messenger or other appropriate means.
- 6.6. After having been identified by the Hearing Managers, Participants will be assigned to, and placed into, their appropriate breakout room until the Hearing commences.

- 6.7. Access to the videoconference shall be restricted to the Participants, who bear a continued duty to warn of the presence of any other person on the videoconference. No person other than the Participants shall be admitted to the videoconference, unless otherwise decided by the Tribunal.

7. VIDEOCONFERENCE ETIQUETTE

- 7.1. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, Participants should remain connected throughout the Hearing day, including during breaks.
- 7.2. During the videoconference, all Participants without an active role at any given moment should mute their own audio and turn off their video. All active participants (Tribunal members and lead counsel) shall have their videos on. The Tribunal may request Participants without an active role to also turn on their video.
- 7.3. Participants should join the Hearing from a location without background noise and with adequate lighting. All Participants should consider using a headset (headphones with integrated microphone) of good quality, and active Participants should ensure they have access to such a headset. All Participants should further ensure that all devices (e.g., telephones, mobile phones) other than the device through which the Participant is connected are in silent mode and that there is no other person in the same physical room with them unless that person is listed in Annex I.
- 7.4. Participants shall endeavor to speak one at a time, except to interpose an objection to a question asked or to alert other Participants of technical difficulties.
- 7.5. The technician shall disable the Zoom built-in chat function, except for communications with the technician.
- 7.6. The Tribunal may adjust or supplement the above provisions on etiquette, in consultation with the Parties, during the course of the Hearing.

8. INTERNET CONNECTION AND DEVICES

- 8.1. Each Party shall be responsible for ensuring that its Participants connect to the Hearing Platform through a stable internet connection, offering sufficient bandwidth (a minimum bandwidth of 8 Mbps download and 1.5 Mbps upload speed is recommended), and use a camera, microphone, and speaker of good quality. All active Participants at the Hearing are required to use good quality microphones and cameras, as tested by the technician before the start of the Hearing.
- 8.2. All Participants shall have access to at least two screens (with a recommended minimum size of 13” and 1920x1080 screen resolution), as tested by the technician before the start of the Hearing.
- 8.3. It is recommended that the Participants adjust their cameras in a manner that their face and part of their torso may be clearly visible in adequate lighting, as tested by the technician before the start of the Hearing. If two or more people are attending the Hearing together in a room, the active speaker may use his or her own camera focused on his or her face, provided that there is a second camera that shall be placed to provide a view of a reasonable part of, if not the entire, room.
- 8.4. Participants are also encouraged to keep a smartphone or tablet, having at a minimum a 4G data connection and mobile hotspot functionality available as a backup internet connection at all times during the Hearing. The Hearing Managers will provide a dial-in telephone audio option as a backup option for Participants experiencing difficulties with computer audio.

9. DOCUMENTATION

- 9.1. The Parties may use demonstrative exhibits (i.e., charts, tabulations, graphs etc. compiling information that is on the record but not presented in such form) at the Hearing, provided that such demonstrative exhibits (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record, and (iii) are distributed by email to all other Participants (including the other side, the Members of the

Tribunal, the Tribunal Secretary, the Assistant to the Tribunal, and the court reporters) by 23:00 CET on the eve of the day of their use.

- 9.2. For the avoidance of doubt, PowerPoint slides are not demonstrative exhibits (unless they contain graphs, tables, etc. compiling information on the record but not on such form). Subject to the rules on demonstrative exhibits above, the Parties may use PowerPoint presentations during their oral arguments. Subject to the rules on prior submission of demonstrative exhibits, PowerPoint slides shall be submitted electronically before the start of each presentation to the opposing Party, the Tribunal Members, the Assistant, the Secretary, the court reporter and the interpreters. PowerPoint presentations shall not contain any new evidence. The Parties are not required to submit hard copies of these presentations.
- 9.3. The display of documents during examinations or to answer questions from the Tribunal shall be made through the screen-sharing function of the Hearing Platform, the speaker and the relevant document being seen simultaneously at all times. During the examination, a witness or expert may request to be shown other pages of a document that is being displayed in order to put specific passages in the context.
- 9.4. Documents that do not form part of the record may not be presented or referred to at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal.

10. WITNESS AND EXPERT EXAMINATION

10.1. At the hearing, the examination of each witness and expert shall proceed as follows:

10.1.1. A fact witnesses shall make the declaration pursuant to ICSID Arbitration Rule 38(6) and an expert witness shall make the declaration pursuant to ICSID Arbitration Rule 38(8).

10.1.2. The rule set out in PO1 for the direct examination of experts is confirmed. In particular, the direct examination will proceed in accordance with paragraph 19.6 of PO1, which provides as follows:

19.6. In lieu of direct examination an expert may provide a brief presentation of his or her report for no longer than 30 minutes, subject to a different duration directed by the Tribunal after consultation of the Parties at the pre-hearing organizational meeting.

10.1.3. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement, and the witness credibility;

10.1.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, for no longer than 10 minutes;

10.1.5. The Tribunal may ask its questions at any time, likely mainly at the end.

10.2. A witness shall not attend the Hearing during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to experts.

10.3. Pursuant to Paragraph 18.17 of PO No. 1, the Tribunal shall, at all times, have complete control over the procedure for hearing witnesses and experts.

11. LANGUAGE

- 11.1. The Hearing shall be conducted in English and Spanish.
- 11.2. ICSID will arrange for simultaneous interpretation of the Hearing into both procedural languages.

12. TRANSCRIPT AND RECORDINGS

- 12.1. ICSID will arrange for the Hearing to be transcribed by a court reporter (the “**Court Reporter**”) pursuant to Section 22 of PO No. 1 and the rules set out in this Section.
- 12.2. The Court Reporter will provide verbatim, real-time transcriptions of the Hearing in English and Spanish, which shall be made available on a separate remote platform.
- 12.3. The Hearing Managers shall circulate the connection details for the transcript no later than on the day prior to the Trial VCs. Transcripts will be circulated by email at the end of each Hearing day. Participants are encouraged to use an additional device (e.g., a tablet) or screen for viewing the transcript.
- 12.4. The cost of court reporting services shall be borne equally by both Parties, subject to the Tribunal’s award of costs.
- 12.5. ICSID will arrange for the Hearing to be audio and video recorded. No Participant, other than the Court Reporter, shall record, via audio, video, or screenshot, any part of the Hearing, unless the Tribunal grants express leave to this effect.
- 12.6. Persons providing services in support of the hearing shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the hearing; and (iii) dispose of all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their hearing-related work has been completed.

12.7. The Parties shall endeavor to agree on transcript corrections and advise the Tribunal accordingly by the time limit to be fixed at the end of the hearing. The Tribunal will decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered in the revised transcript by the court reporter.

12.8. In the event of conflict between the English and the Spanish transcripts, the transcript in the original language in which the testimony was given shall prevail.

13. TECHNICAL PROBLEMS

13.1. By 7 April 2025, each Party shall designate one of its representatives to act as videoconferencing contact person (the “**VC Emergency Contact Person**”) for purposes of addressing any technical incidents that may arise during the videoconference. The VC Emergency Contact Person shall be responsible for immediately advising the Tribunal and the Tribunal Secretary if an essential Participant from that Party is disconnected or otherwise cannot participate, such that the Tribunal may pause the Hearing. In case of other difficulties, the VC Emergency Contact Person shall notify and address technical issues with the Hearing Manager and/or the Tribunal Secretary, without interrupting the Hearing.

13.2. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding.

13.3. The Parties may liaise with the Hearing Managers on such other logistical aspects as necessary.

14. POST-HEARING BRIEFS AND STATEMENTS OF COSTS

14.1. In consultation with the Parties, the Tribunal will determine at the end of the Hearing whether there shall be post-hearing briefs. If so, the Tribunal, in consultation with the Parties, will determine the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal.

- 14.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the Hearing.

15. DATA PRIVACY

- 15.1. The list of participants will contain personal data provided to ICSID, including names and contact information, such as business email addresses and telephone numbers. This data will be processed for the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Hearing Participants.

Date: 7 April 2025

[Signed]

Prof. Gabrielle Kaufmann-Kohler
On behalf of the Tribunal

ANNEX I

LIST OF PARTICIPANTS

Name	Designation	Location	Venue	Email
Arbitral Tribunal and Assistant to the Tribunal				
Prof. Gabrielle Kaufmann-Kohler	Tribunal	Geneva, Switzerland		gabrielle.kaufmann-kohler@lk-k.com
Prof. Franco Ferrari	Tribunal	New York, NY, USA		franco.ferrari@nyu.edu
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Dr. David Khachvani	Assistant to the Tribunal	Geneva, Switzerland		david.khachvani@lk-k.com
Tribunal Secretary and ICSID				
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Pedro Magariño	Paralegal	Washington, DC, USA		pmagarino@worldbank.org
Claimant				
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Erica Kwan	Counsel for Claimant	London, UK		erica.kwan@bclplaw.com
June Foyo-Lorenzo	Legal Assistant - Counsel for Claimant	Miami, Florida USA		june.foyolorenzo@bclplaw.com

Name	Designation	Location	Venue	Email
Kenneth Smith Ramos	Fact Witness	Mexico City, Mexico		kenneth.smith@agon.mx
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Respondent				
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Court Reporter				
Mr. Dante Rinaldi				
Ms. Dawn Larson				
Interpreters				
Mr. Jesus Getan Bornn				
Ms. Amalia de Klemm				
Ms. Anna Sophia Chapman				

ANNEX II

HEARING SCHEDULE

Note: *this Hearing Schedule is indicative only. The Tribunal will adjust it if required by the progress of the hearing.*

Day 1 14 April 2025	
Time	Description
8:00 AM (Mexico City) 4 PM (Geneva)	Tribunal's opening remarks / housekeeping
	Respondent's Opening Statement (max. 90 minutes)
	Break
	Claimant's Opening Statement (max. 90 minutes)
	Break
	NDP Oral Submission by the US (max. 30 minutes)
	NDP Oral Submission by Canada (max. 30 minutes)
	Break
	Examination of Mr. Smith Ramos
Day 2 15 April 2025	
Time	Description
8:00 AM (Mexico City) 4 PM (Geneva)	Housekeeping
	Examination Prof. Tams
	Tribunal Questions
	Longer Break
	Answers to Tribunal Questions (app. 30 minutes per Party)
	Closing Discussion