

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER ARTICLE 8(2)(A) OF THE AGREEMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT
OF THE CZECH AND SLOVAK FEDERAL REPUBLIC FOR THE PROMOTION AND PROTECTION OF
INVESTMENTS AND THE UNCITRAL ARBITRATION RULES (1976)**

A11Y LTD.

v.

CZECH REPUBLIC

(ICSID Case No. UNCT/15/1)

**PROCEDURAL ORDER NO. 8
Decision on the Parties' Document Production Requests**

Tribunal

The Hon. L. Yves Fortier, QC, Presiding Arbitrator
Stanimir Alexandrov, Arbitrator
Anna Joubin-Bret, Arbitrator

Secretary to the Tribunal

Jara Mínguez Almeida

Assistant to the Tribunal

Annie Lespérance

April 11th, 2017

Procedural Order No. 8

I. Procedural Background

1. In accordance with the procedural calendar set out in Procedural Order No. 7, the Claimants and the Respondent submitted document production requests for the Tribunal's decision on 3 April 2017.

II. Decision

2. The Tribunal's decision on the Claimants' and the Respondent's requests is set out in the two "Redfern Schedules" attached to this Order.
3. Each Party is ordered to produce the documents indicated therein to the requested Party, but not yet to the Tribunal, within the time limit set in Procedural Order No. 7, that is, by 8 May 2017.
4. The Tribunal notes that its decision on the parties' requests is not intended to provide an implied decision on any issue in dispute between the parties.
5. To the extent that documents responsive to a document production request may be subject to commercial sensitivity such that confidentiality undertakings may be required, the Tribunal directs the parties to agree confidentiality undertakings. Should they fail to agree, the parties are directed to report to the Tribunal by 8 May 2017.
6. To the extent that a party wishes to assert privilege over responsive documents, the Tribunal directs such party to file a privilege log identifying the responsive document, its date, and the basis for the privilege claimed by 8 May 2017.
7. To the extent that a party asserts that responsive documents have been lost or destroyed, the Tribunal directs such party to file a submission by 8 May 2017 explaining, pursuant to Article 9(2) of the IBA Rules on the Taking of Evidence, "with reasonable likelihood" how the loss or destruction of the requested document occurred.
8. Insofar as documents ordered are not produced or not fully produced as ruled in this Order, the Tribunal may take this into account in its evaluation of the respective factual allegations and evidence including a possible inference against the party refusing production.

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9. The costs of and incidental to the Parties' applications shall be reserved for later consideration, if necessary.

Paris, this 11th day of April 2017

Signed on behalf of the Arbitral Tribunal

[*signed*]

The Hon. L. Yves Fortier, QC
President

**IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL ARBITRATION RULES
ICSID CASE NO. UNCT/15/1**

- BETWEEN -

A11Y LTD

- AND -

THE CZECH REPUBLIC

**TRIBUNAL'S DECISION
IN RESPECT OF THE
CLAIMANT'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
A. The Respondent's internal measures:					
1.	<p>The Claimant requests all Documents¹ which:</p> <ul style="list-style-type: none"> i. relate to the "cases" that were "passed on from local Labour Offices to the General Directorate" of the Labour Office "in the second half of 2012"; and ii. relate to communications between the Labour Offices of the Czech Republic and the Ministry of Labour and Social Affairs of the Czech Republic (the "Ministry") "in early and mid-2013" regarding the possible denial of the Claimant's assistive technology solutions applications "because a list of components had not been submitted." 	<p>At ¶¶ 176 - 180 of its Counter-Memorial, the Respondent stated with regard to the Claimant's assistive technology solutions applications that "In the second half of 2012 [...] [s]everal cases were passed on from local Labour Offices to the General Directorate for advice" and that "The Labour Offices were not entirely certain about... whether they could deny applications because a list of components had not been submitted" and "The Labour Offices therefore in early and mid-2013 had repeated contacts with the Ministry asking for guidance on this point."</p> <p>These Documents are relevant to the case and material to its outcome as they would shed light on the nature and means of the Respondent's approach to the Claimant's assistive technology solutions applications and the rejection of those applications, including issues of bias and prejudice.</p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p> <p>However, Respondent notes that from 01.01.2012 until 31.12.2013 the allowances have been provided through an information system that does not exist anymore. The system has been replaced and within that process, some of the data has been lost.</p>	<p>The Respondent states that it is "still in the process of searching for such documents and will produce any such documents that it is able to locate."</p> <p>The first request for document production was made on 8 March 2017 by the Parties. The production of Documents will take place on 8 May 2017. This gives the Parties exactly two months to locate and produce the Documents that are captured by the requests.</p> <p>The Respondent does not have a convenient choice of providing only the Documents "it is able to locate". Rather, it has an obligation, under Article 3(4) of the IBA Rules, to provide "[w]ithin the time ordered by the Arbitral Tribunal [...] all the Documents requested".</p> <p>Accordingly, the Respondent should produce all Documents falling under this category or explain the steps undertaken to locate all Documents and why these steps failed.</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

¹ The reference to "Documents" in this request for production of documents has the meaning given to "document" in the 2010 IBA Rules on the Taking of Evidence in International Arbitration, namely "a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means." Paragraph 1.2 of Procedural Order No. 1 dated 23 March 2015 provides that "the Arbitral Tribunal will apply the 2010 IBA Rules on the Taking of Evidence in International Commercial Arbitration for any document request of a party and may seek guidance from, but shall not be bound by these rules in other matters."

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>The Respondent makes a simple and vague reference to an "<i>information system that does not exist anymore</i>" and states that "<i>some of the data has been lost.</i>"</p> <p>Article 9 (2)(d) of the IBA Rules requires the Respondent to show "<i>with reasonable likelihood</i>" that the loss or destruction of the requested Document has occurred.</p> <p>The Respondent's explanations do not meet this threshold.</p> <p>In particular, the Respondent does not explain how and why the data was lost, how the data was filed, when the system was changed, and why it was changed.</p> <p>It is not clear how the change in an information system through which allowances have been provided would result in a loss of Documents relating to communications between the Labour Offices of the Czech Republic and the Ministry of Labour and Social Affairs.</p> <p>Furthermore, it is very unlikely that no hard copy Documents exist in relation to this request.</p> <p>It stretches credulity too far to expect that there are no paper</p>	

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>Documents that relate to the "data that was lost."</p> <p>The Respondent's vague explanations, at the very least, create reasonable suspicion that it is being evasive and reluctant to provide the requested Documents.</p> <p>The requested Documents are directly referred to at ¶¶ 176 - 180 of the Respondent's Counter-Memorial and the Respondent relies on them. These Documents must have been in the Respondent's possession, custody or control while the Counter-Memorial was being drafted and the Respondent should accordingly provide the Documents it relies on.</p>	
2.	<p>The Claimant requests all Documents which relate to the Respondent's "effective way to stop Claimant's detrimental business conduct"² as well as the Documents which relate to the Ministry's "hard and fast instructions on how to avoid paying for over-priced solutions."³</p>	<p>The Respondent stated in ¶ 185 of its Counter-Memorial that "Both the Ministry of Labour and Social Affairs and the Labour Office therefore needed an effective way to stop Claimant's detrimental business conduct" and in ¶ 189 that "the Ministry considered it very necessary to provide the Labour Offices with hard and fast instructions on</p>	<p>Respondent is still in the process of locating any such documents.</p> <p>However, according to Point 1.2 of the PO 1 the Arbitral Tribunal will apply the 2010 IBA Rules on the Taking of Evidence in International Commercial Arbitration for any</p>	<p>The Claimant narrows its request to all Documents relating to communications between the Ministry and the Labour Offices between May 2013 to October 2014 and which relate to the Respondent's "effective way to stop Claimant's detrimental business conduct"⁴ as well as the Documents which relate to the Ministry's "hard and fast instructions on how to avoid</p>	<p>The Tribunal notes that the Respondent, on the one hand, says that it "is still in the process of locating any such documents" and, on the other, that it "objects to this request in its entirety".</p> <p>The request, as narrowed, is granted.</p>

² Respondent's Counter-Memorial ¶ 185.

³ Respondent's Counter-Memorial ¶ 189.

⁴ Respondent's Counter-Memorial ¶ 185.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p><i>how to avoid paying for over-priced solutions."</i></p> <p>The requested Documents are relevant to the case and material to its outcome in that they are likely to shed light on the manner in which the Respondent put a stop to the Claimant's business and imposed instructions that were prejudicial to the Claimant's business.</p> <p>The Claimant does not have possession, control or custody of the requested Documents, apart from the "Statement of the Ministry" issued on 12 July 2013, C-0010 and Decision No.14/2013, C-0040.</p>	<p>document request of a party.</p> <p>Article 3(3)(a)(ii) of the IBA Rules stipulates that a document request shall contain a description in sufficient detail of a narrow and specific requested category of documents and indicate the subject matter of these documents.</p> <p>Claimant's request falls short of this requirement. It requests any documents, which relate to "Respondent's effective way to stop Claimant's detrimental business conduct" and to "the Ministry's hard and fast instructions on how to avoid paying for over-priced solutions".</p> <p>Claimant does not give a specific time span for its request. Furthermore, it does not limit its request to any specific authority, addressee or recipient. The material scope of Claimant's request is broad enough to encompass essentially all documents pertaining to the case, including for example any internal communication or correspondence of Respondent and all</p>	<p><i>paying for over-priced solutions."</i></p> <p>The requested Documents must exist as the Respondent specifically relies on them and makes direct reference to them at ¶¶ 185 and 189 of its Counter-Memorial. As such, the request is narrow and specific as required by the IBA Rules.</p> <p>The Respondent should produce all Documents falling under this category.</p>	<p>The Respondent is ordered to produce documents in support of its own assertions at ¶¶ 185 and 189 of its Counter-Memorial.</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			<p>involved entities and persons from the beginning of the case until essentially today.</p> <p>Therefore, Respondent objects to this request in its entirety.</p>		
3.	<p>The Claimant requests Documents which relate to internal communications between the "officers of the Methodology department of the General Directorate of the Labour Office" and "the Department of methodology of allowance systems at the Ministry of Labour and Social Affairs ("MPSV") in order to consult them"⁵ regarding assistive technology solutions applications made by the Claimant and/or Brailcom.</p>	<p>Ms [...], Director for Social Affairs Department in the General Directorate of the Labour Office, stated in ¶ 8 of her witness statement that "<i>the officers of the Methodology department of the General Directorate of the Labour Office contacted their colleagues from the Department of methodology of allowance systems at the Ministry of Labour and Social Affairs ("MPSV") in order to consult them regarding this problem.</i>"</p> <p>These Documents are relevant to the case and material to its outcome as they would shed light on the nature and means of the Respondent's approach to the Claimant's and Brailcom's assistive technology solutions applications, including issues of bias and prejudice.</p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p>	<p>The Respondent states that it is "<i>still in the process of searching for such documents and will produce any such documents that it is able to locate.</i>"</p> <p>The first request for document production was made on 8 March 2017 by the Parties. The production of Documents will take place on 8 May 2017. This gives the Parties exactly two months to locate and produce the Documents that are captured by the requests.</p> <p>The Respondent does not have a convenient choice of providing only the Documents "<i>it is able to locate</i>". Rather, it has an obligation, under Article 3(4) of the IBA Rules, to provide "<i>[w]ithin the time ordered by the Arbitral Tribunal [...] all the Documents requested</i>".</p> <p>This request is very specific and the Respondent should</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

⁵ Witness Statement of [...], ¶ 8.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				not have any difficulty to locate the requested Documents.	
4.	<p>The Claimant requests:</p> <p>i. all Documents with which Ms Bilková and/or the General Directorate of the Labour Office were "<i>made aware of the specific commercial practices of BRAILCOM [...] through [its] regional branches</i>";⁶</p> <p>ii. all Documents with which Ms Bilková and/or the General Directorate of the Labour Office "<i>consulted the individual cases with the Ministry of Labour and Social Affairs</i>" in relation to assistive technology solutions applications made by the Claimant and/or Brailcom;⁷</p> <p>iii. all Documents recording and/or relating to communications, starting in autumn 2012, between Ms Průžková and Mgr Duchacova with regard to assistive technology solutions applications submitted by the Claimant and/or Brailcom;⁸</p> <p>iv. all Documents recording and/or relating to communications between the regional branches of the Labour Office and the General Directorate regarding guidance in relation to assistive technology solutions</p>	<p>Ms Marie Bilková, Director General of the Labour Office, informed Mr David Ondráčka, Director of Transparency International, in a letter dated 29 May 2013 that she had already been "<i>made aware of the specific commercial practices of BRAILCOM, o.p.s., which supplies special aides to the visually impaired persons, through our regional branches. We have repeatedly provided guidance to our regional branches in cases where the applicant requests a contribution to purchase special aid which is then supplied by BRAILCOM, o.p.s.</i>" and that "<i>we have often consulted the individual cases with the Ministry of Labour and Social Affairs (MoLSA), which is the body responsible for interpretation of the Act. MoLSA has also started to investigate the practices of BRAILCOM, o.p.s. as well as the administrative proceedings where BRAILCOM, o.p.s. acts as the authorized representative.</i>"¹²</p>	<p>Respondent does not object to this request.</p> <p>However, Regarding points (i) and (ii) Respondent was not able to locate any such documents yet.</p> <p>Regarding points (iii), (iv) and (vi) of the request Respondent is unable to provide any such documents for the following reasons:</p> <ul style="list-style-type: none"> • Documents referred to in points (iii) and (vi) do not exist. • Further, Respondent changed its electronic communication platform in December 2015. Due to this change, Respondent lost the documents referred to in point (iv). <p>Regarding point (v) of the request, Respondent notes that only general</p>	<p>The Respondent states that it is unable to locate Documents under sub-category (i) and (ii). By the time the Respondent is required to disclose the Documents on 8 May 2017, it will have had two months to locate specific Documents from specified senders to specified recipients, and the Respondent itself alleged these existed in R-0022. There is no reason why the Respondent would not be able to locate these Documents within this time frame.</p> <p>The Respondent further states that it is unable to provide Documents requested under the remaining sub-categories, either because they do not exist or because they were lost in December 2015.</p> <p>These statements are simply not credible for the following reasons:</p> <p>First, the Respondent alleges, in its own words, it has been "<i>made aware of the specific</i></p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

⁶ R-0022, ¶ 2.

⁷ R-0022, ¶ 2; C-0030, ¶ 4.

⁸ Witness Statement of Milena Průžková, ¶ 13.

¹² R-0022, ¶ 2.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>applications submitted by the Claimant and/or Brailcom;⁹</p> <p>v. all Documents through which the General Directorate provided "guidance" and/or directions to its regional branches in cases in which the Claimant and/or Brailcom made assistive technology solutions applications;¹⁰ and</p> <p>vi. all Documents with which the Ministry provided "guidance" to the Labour Office in relation to assistive technology solutions applications submitted by the Claimant and/or Brailcom.¹¹</p>	<p>The same statement is referred to in an e-mail dated 4 December 2013 from Mr Ondráčka, to Mr Jan Buchal.¹³</p> <p>Furthermore, Ms Milena Průžková, Head of Non-Insurance Allowance Systems Department, stated in ¶ 13 of her Witness Statement that there had been communication "on the workplace and at the General Directorate" and that she "communicated in this regard with Mgr Duchacova who was in charge of the allowances for disabled persons." in relation to assistive technology solutions applications submitted by the Claimant and/or Brailcom.</p> <p>These Documents are relevant to the case and material to its outcome in that they would address the nature of the Respondent's approach to the Claimant's assistive technology solutions applications, the lack in transparency of the Respondent's communications with Transparency International and the Respondent's pre-judging of the Claimant's</p>	<p>documents containing such "guidance and/or directions" exist. Documents specifically with regard to Claimant and/or Brailcom do not exist. Respondent will provide all documents that it was able to locate.</p>	<p><i>commercial practices of BRAILCOM [...] through [its] regional branches" and that the Labour Office "often consulted the individual cases with the Ministry of Labour and Social Affairs" and that the General Directorate "repeatedly provided guidance to [their] regional branches in cases where the applicant requests a contribution to purchase special aid which is then supplied by BRAILCOM."</i>¹⁴</p> <p>The above references from the Respondent's own evidence in R-0022 demonstrate that the Respondent was engaged in active internal discussions about applications submitted by the Claimant and/or Brailcom.</p> <p>It is implausible, for example, that all communications between Ms Průžková and Mgr Duchacova relating to this request were always and only made orally and that no Documents, hard copies, notes, writing, communication,</p>	

⁹ R-0022, ¶ 2.

¹⁰ R-0022, ¶ 2.

¹¹ R-0022, ¶ 2.

¹³ C-0031, ¶ 4.

¹⁴ R-0022, ¶ 2, emphasis added.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>business before the Respondent took actions against the Claimant, as well as the issues of bias and prejudice of the Respondent against the Claimant.</p> <p>The Claimant does not have possession, custody or control of these Documents as they are Documents which relate to the Respondent's internal records and procedures, apart from the "Statement of the Ministry" issued on 12 July 2013, C-0010 and the Decision No.14/2013, C-0040.</p>		<p>pictures, drawings, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means, as described in the IBA Rules, exist.</p> <p>Furthermore, the Respondent alleges that it only has general Documents containing guidance and/or directions but that "<i>Documents specifically with regard to Claimant and/or Brailcom do not exist.</i>" This statement contradicts the clear wording in R-0022, which assures that the General Directorate of the Labour Office "<i>repeatedly provided guidance to our regional branches in cases where the applicant requests a contribution to purchase special aid which is then supplied by BRAILCOM, o.p.s.</i>"¹⁵</p> <p>In addition to the above, the Claimant is aware that the Respondent's officers were informed, by way of an e-mail sent on 6 May 2014, that the Claimant (or Brailcom) and its calculations would be discussed during the methodological day to take place on 27 May 2014. Indeed, the Claimant is aware that one of the Respondent's officers</p>	

¹⁵ Emphasis added.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>referred to this discussion in an e-mail sent on 1 July 2014.</p> <p>Accordingly, the e-mail of 6 May 2014 and any Documents relating to the methodological days on 27 May 2014 are captured by this category and should be provided, as there is no doubt that they exist.</p> <p>Finally, the Respondent alleges to have lost Documents requested under sub-category (iv) due to a change in its electronical communication platform in December 2015.</p> <p>This does not come close to showing with "<i>reasonable likelihood</i>", as required under Article 9(2)(d) of the IBA Rules, that these Documents were lost. There is no detail as to what happened, how the Respondent communicated before December 2015, why the database was changed and why the Respondent does not archive its internal communications on an issue of such importance.</p> <p>In addition to the above, and significantly, the Notice of Arbitration was filed on 10 October 2014 (almost one year before the Respondent alleges to have lost these Documents) and Procedural Order No.1 ("PO.1") was issued on 23 March 2015 (5 months before</p>	

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>the Respondent alleges to have lost the Documents). ¶ 1.2 of PO. 1 refers to the IBA Rules.</p> <p>The Respondent was therefore well aware long before December 2015 that it was under a duty, as a Party to these proceedings, to preserve all Documents that could be relevant to this case and not to destroy or delete such Documents.</p> <p>Accordingly, if the Respondent fails to produce the requested Documents, the Tribunal should draw adverse inferences from such failure.</p>	
5.	<p>The Claimant requests all Documents and communications between local branches of the Labour Office and the "Directorate General" providing information and/or a summary of "all completed and pending proceedings on contributions to be granted to purchase special aides where BRAILCOM, o.p.s. acted both as the supplier and the authorized representative of the applicant"¹⁶ and regarding the Claimant's and/or Brailcom's assistive technology solutions applications.</p>	<p>Ms Bilková wrote to Mr Ondráčka on 13 December 2013 to report that "<i>the Directorate General asked all regional branches and the Prague office of the Labour Office CR in June 2013 to provide information to us regarding all completed and pending proceedings on contributions to be granted to purchase special aides where BRAILCOM, o.p.s. acted both as the supplier and the authorized representative of the applicant.</i>"¹⁷</p>	<p>Respondent does not object to this request.</p>		<p>The Tribunal notes that the Respondent does not object to the request.</p>

¹⁶ R-0024, ¶ 2 and Witness Statement of [...], ¶ 10. ¹⁷ R-0024, ¶

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>Ms [...], Director for Social Affairs Department in the General Directorate of the Labour Office also stated in ¶10 of her witness statement that <i>"After the Labour Office received the letter of Transparency International [...], all cases where the applicants had submitted an offer from BRAILCOM were analysed to provide a summary."</i></p> <p>The requested Documents are relevant to the case and material to its outcome in that they will shed light on the nature of the Respondent's approach to the Claimant, issues of bias and prejudice by the Respondent against the Claimant.</p>			
6.	<p>The Claimant requests:</p> <ul style="list-style-type: none"> i. all Documents evidencing internal decisions taken as a result of the Labour Office's investigations, referred to in ¶ 14 of Ms Průžková's witness statement; ii. all Documents evidencing internal decisions taken as a result of the Ministry's investigations as referred to in Ms Bilková's letter, R-022; and iii. all Documents with which the Labour Office presented the results of their investigation to the Ministry as referred to in ¶ 14 of Ms Průžková's witness statement. 	<p>Ms Bilková, Director General of the Labour Office, informed Mr Ondráčka, Director of Transparency International, in a letter dated 29 May 2013 that <i>"MOLSA [The Ministry] has started to investigate the practices of BRAILCOM, o.p.s as well as the administrative proceedings where BRAILCOM, o.p.s acts as the authorized representative."</i>¹⁸</p> <p>Likewise, Ms Průžková stated in ¶ 14 of her witness statement that the Labour Office <i>"gathered all cases in which the applicants</i></p>	<p>Respondent does not object to this request.</p> <p>However, regarding point (ii) of the request Respondent was not able to locate any such documents yet.</p> <p>Respondent changed its electronic communication platform in December 2015. Due to this change, Respondent lost some of its relevant email communication.</p>	<p>It strains credulity to expect that the Respondent is unable to locate Documents regarding the investigations the Respondent stated that it undertook.</p> <p>The Respondent will have had two months to locate specific Documents which the Respondent itself alleged to exist in R-0022. There is no reason why the Respondent would not be able to locate them.</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

¹⁸ **R-0022**, ¶ 2.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p><i>submitted a price quote from Brailcom." and "presented the results of the investigation to the Ministry of Labour and Social Affairs". The same "investigations" were referred to in ¶ 3, page 2 of a second letter from Ms Bilková to Mr Ondráčka on 13 December 2013.¹⁹</i></p> <p>These Documents are relevant to the case and material to its outcome as they relate to internal proceedings in which the Claimant's assistive technology solutions applications are being "assessed" or "investigated."</p> <p>The requested Documents go to whether the nature of the Respondent's approach to these "assessments" was neutral, fair and impartial.</p> <p>Apart from C-0010 and C-0040, the requested Documents are not in the Claimant's possession, control or custody as they relate to the Respondent's internal procedures and internal decisions taken as a result of these procedures or "investigations" as referred to by the Respondent.</p>	<p>Regarding points (i) and (iii) of the request, Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p>	<p>The Respondent does not show with "reasonable likelihood", that these Documents were lost. Furthermore, any loss or destruction of the requested Documents at or around December 2015 would breach the Respondent's duty, as a Party to these proceedings, to preserve and not to destroy or delete documents that could be relevant to this case.</p> <p>Accordingly, if the Respondent fails to produce the requested Documents, the Tribunal should draw adverse inferences from such failure.</p>	

¹⁹ R-0024.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
7.	<p>The Claimant requests:</p> <ul style="list-style-type: none"> i. all Documents provided to the Respondent with Transparency International's letter of 21 May 2013 letter R-009; ii. all Documents evidencing and/or relating to communications between the Respondent and Transparency International regarding assistive technologies starting at 21 May 2013 to date; and iii. all Documents referred to in ¶ 109 of Mr Abdul Sirshar Qureshi's Expert Report, R-0021, which were sent to Transparency International and relate to Transparency International's inspection of "<i>applications for Allowances from 1 January 2012</i>" as described in Mr Qureshi's Expert Report. 	<p>These Documents are relevant to the case and material to its outcome in that they would demonstrate the Respondent's approach in its communications with Transparency International relating to the assistive technology solutions applications made by the Claimant and/or Brailcom.</p> <p>The Respondent has provided R-009, R-0022 and R-0023. However, the Claimant does not have possession, custody or control of any further Documents relating to communication between Transparency International and the Respondent.</p>	<p>Respondent does not object to points (i) and (ii) of this request.</p> <p>However, regarding points (i) and (ii) of the request, Respondent has not been able until today to locate any such documents and is not aware of any such documents apart from TI's letter itself, a reminder that was sent a few months later and Respondent's respective answers (that Respondent all submitted as R-009, R-0022, R-0023 and R-0024).</p> <p>Respondent objects to point (iii) of Claimant's request.</p> <p>In para 109 of the expert report – to which Claimant refers to – Mr Qureshi clearly states that he is referring to a letter of TI which states that „<i>persons with severe visual impairment turned to TI and complained about the pricing practices of Brailcom</i>“. Mr Qureshi does not indicate that he or Respondent would be in possession of any such complaints that were send to TI.</p> <p>According to article 3(3)(c)(ii) IBA Rules, Respondent must only</p>	<p>The Respondent will have had two months to locate specific Documents and should be able to provide all Documents in its possession, custody or control by 8 May 2017.</p> <p>In relation to sub-category (iii), the Claimant requests all Documents which were sent by the Respondent to Transparency International and that Transparency International was allowed to inspect, as mentioned in ¶ 109 of Mr Abdul Sirshar Qureshi's Expert Report, R-0021. The Claimant does not request Documents sent by third parties to Transparency International.</p> <p>Since the Respondent will have possession, custody or control of Documents it sent itself to Transparency International, and which Transparency International "<i>inspected</i>" or investigated, and the Respondent makes no objection, the Respondent should provide these Documents by 8 May 2017.</p>	<p>The Tribunal notes that the Respondent does not object to sub-requests (i) and (ii).</p> <p>Sub-request (iii), as amended by the Claimant, is granted.</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			<p>produce such documents that are in its possession, custody or control.</p> <p>The documents Claimant is referring to were send to TI and not to Respondent. Hence, these documents are not in the possession, custody or control of Respondent.</p>		
8.	<p>The Claimant requests all Documents and communications between the Labour Office and/or the Ministry and the television channels CT1 and/or CT24 regarding their news report on 12 January 2014.</p>	<p>A news report was broadcast on 12 January 2014 on Czech television channels CT1 and CT24 in which the press speaker of the General Directorate of the Labour Office, Ms [...], alleged that Brailcom, and by inference the Claimant, overpriced its assistive technology solutions and essentially stole money from the State.²⁰</p> <p>These Documents are relevant to the case and material to its outcome as they will shed light on the extent of the information which was disclosed by the Respondent to third parties about the Claimant as well as the nature of the Respondent's approach with regards to communications with the Czech media about the Claimant.</p>	<p>Respondent has thoroughly searched its archives, but could not locate any documents falling in this category.</p> <p>Furthermore, Claimant never has argued that Respondent disclosed any information to the television channels CT1 and/or CT24 that exceeds the information that was publicly broadcast in the news report. Claimant is engaging in a "fishing expedition" and asking for documents in order to determine whether they may show something of relevance to its case. Hence, the requested documents are of no relevance for the present case within the meaning of article 3(3)(b) IBA Rules.</p>	<p>The requested Documents are clearly relevant to the case and material to its outcome. These Documents relate to a public television broadcast about the Claimant during which the Respondent made direct comments and allegations about the Claimant and after which the Claimant's business was severely damaged.</p> <p>In particular, Ms [...] said "<i>For example, the iPads, which have, say, voice dialling already included in their price, then even for such services [BRAILCOM] billed special surcharges.</i>" and "<i>At the moment, we do not know the exact amount the state lost as a result of this overpricing.</i>"²¹</p> <p>Far from being irrelevant, the requested Documents go to</p>	<p>The request is moot as the Respondent has searched its archives and has not located any documents.</p>

²⁰ C-0032 and Witness Statement of Jan Buchal, ¶¶ 117 – 121.

²¹ C-0032, page 2, ¶ 2.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			<p>Therefore Respondent object to this request in its entirety.</p>	<p>the heart of the Claimant's expropriation case.</p> <p>This is not a "fishing expedition." It is sufficiently narrow and specific as the senders and the recipients are defined and there is a specific and narrow time frame for the request. The Documents are clearly relevant to the case and material to its outcome.</p> <p>Furthermore, it strains credulity to expect the Claimant and the Tribunal to accept that no communications exist between the representatives of television channels CT1 and/or CT24 and the Respondent in relation to the broadcast in which the Respondent participated and which had such a devastating effect on the Claimant's investment in the Czech Republic.</p> <p>The Respondent should be ordered to provide these Documents by 8 May 2017.</p>	
9.	<p>The Claimant requests the Documents recording and/or relating to the meeting between the General Directorate of the Labour Office and MPSV [the Ministry] "<i>which was attended by the officials from various departments of MPSV. After discussing the issue, the officials have taken a clear stance</i>"</p>	<p>In her witness statement, Ms [...] referred to a meeting between the General Directorate of the Labour Office and MPSV [the Ministry] "<i>which was attended by the officials from various departments of MPSV. After discussing the</i></p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such</p>	<p>The Respondent should have no difficulty in locating these specific Documents and should provide all Documents requested under this category by 8 May 2017.</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	including but not limited to the notes of the meeting or recordings of it.	<p><i>issue, the officials have taken a clear stance.</i>"²²</p> <p>These Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of Respondent's approach to the assistive technology solutions applications submitted by the Claimant and/or Brailcom.</p>	documents that it is able to locate.		
10.	The Claimant requests all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the application of Law No. 329/2011 between 2011 and 2014.	<p>As noted above under document request number 1 in relation to ¶¶176 and 180 of its Counter-Memorial, the Respondent has asserted that there were repeated discussions between the Ministry and/or the Labour Office(s) about the application of Law No. 329/2011.</p> <p>The requested Documents are relevant to the case and material to its outcome in that they are likely to shed light on the manner in which the Respondent addressed the application of the law and the assessment of applications for assistive technology solutions.</p>	<p>Respondent is unable to provide any such documents. Respondent changed its electronical communication platform in December 2015. Due to this change, Respondent lost any such documents.</p> <p>Furthermore, Article 3(3)(a)(ii) of the IBA Rules stipulates that a document request shall contain a description in sufficient detail of a narrow and specific requested category of documents and indicate the subject matter of these documents.</p> <p>Law No. 329/2011 – the Act on Providing Allowances to Persons with Health Impairment and Amending Related Laws – to which Claimant refers to, has a very broad</p>	<p>The Claimant narrows its request as follows:</p> <ul style="list-style-type: none"> i. all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the application of paragraphs 4 and 9(10) of Law No. 329/2011, excluding the issues of staircase platforms, staircase chairs and ceiling lifting systems, between 2011 and 2014. Paragraphs 4 and 9(10) of Law No. 329/2011 deal with special provisions in relation to children and the requirement to provide special aids in their basic version respectively; ii.all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the application of Law No. 329/2011 to persons 	The request is moot as the Respondent affirms that it has " <i>lost any such documents.</i> "

²² Witness Statement of [...], ¶ 10.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			<p>scope and is not limited to regulations about granting Aids to visually impaired persons.</p> <p><i>Inter alia</i> the law stipulates conditions for the entitlement to allowances for special aids for persons who have a severe impairment of the musculoskeletal, of the locomotor system, a severe hearing impairment or a severe visual impairment.</p> <p>Further, the law in total has over 39 provisions and is over 50 pages long.</p> <p>Claimant's request is too broad. Since Claimant does not specify its request, it remains unclear to which provisions of the law it refers to and, hence, to trainings on which topics Claimant refers to. Claimant also does not indicate to which types of impairment it refers.</p> <p>Therefore, Respondent objects to this request in its entirety.</p>	<p>with visual impairments applying for the grant of special aids between 2011 and 2014;</p> <p>iii.all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the interpretation (and application in practice) of the terms "<i>least economical demanding</i>" in Law No. 329/2011 including but not limited to persons with visual impairments between 2011 and 2014;</p> <p>iv.all Documents, mentioning the Claimant and/or Brailcom, created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the application of Law No. 329/2011 to persons with visual impairments applying for the grant of special aids between 2011 and 2014;</p> <p>v.all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry, including but not limited to communications with third parties, in relation to the confidentiality of Documents submitted by suppliers relating to applications of aids between 2011 and 2014;</p>	

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>vi.all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to the methodology of comparison and/or calculation of utility, functions and/or prices of special aids – for visually impaired persons – between 2011 and 2014; and</p> <p>vii.all Documents created for or during internal meetings or training at the Labour Office(s) and/or the Ministry in relation to budgets or budgetary allowances for the application of Law No. 329/2011 between 2011 and 2014.</p> <p>The Respondent's stated inability to provide Documents under this category is unacceptable as the Respondent was well aware by December 2015 that it was under a duty, as a Party to these proceedings, to preserve and not to destroy or delete Documents that could be relevant to this case.</p> <p>Accordingly, if the Respondent fails to produce the requested Documents, adverse inferences should be drawn from such failure.</p>	

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
11.	<p>The Claimant requests all Documents produced internally by the Labour Office(s) and/or the Ministry specifying guidance or instruction on the application of Act No. 329/2011 and/or of Decree No. 388/2011.</p>	<p>C-0010 is the Statement from the Ministry which was said to be "<i>targeted to the problem of assessment of the amount of the allowance for a special aid and was initiated by the General Directorate of Labour Office of the Czech Republic and the Department of Appeals and Administrative Proceedings of MPSV.</i>" This document is unlikely to exist in isolation and the Respondent would have produced other Documents on the application of Act No. 329/2011 and/or of Decree No. 388/2011.</p> <p>The requested Documents are relevant to the case and material to its outcome in that they are likely to shed light on the manner in which the Respondent addressed the application of the law and the assessment of applications for assistive technology solutions and the instructions given by the Ministry to other departments or offices within the Czech Republic.</p>	<p>Article 3(3)(a)(ii) of the IBA Rules stipulates that a document request shall contain a description in sufficient detail of a narrow and specific requested category of documents and indicate the subject matter of these documents.</p> <p>Law No. 329/2011 – the Act on Providing Allowances to Persons with Health Impairment and Amending Related Laws – to which Claimant refers to, has a very broad scope and is not limited to regulations about granting Aids to visually impaired persons.</p> <p><i>Inter alia</i> the law stipulates conditions for the entitlement to allowances for special aids for persons who have a severe impairment of the musculoskeletal, of the locomotor system, a severe hearing impairment or a severe visual impairment.</p> <p>Further, the law in total has over 39 provisions and is over 50 pages long.</p> <p>What is more, also Decree No. 388/2011 –, which is an implementing legislation that builds upon</p>	<p>The Claimant narrows its request to:</p> <p>All Documents produced internally by the Labour Office(s) and/or the Ministry specifying guidance or instruction on the application of Annex 1, section II of Decree No. 388/2011, implementing the law on providing allowances to persons with health impairments. Annex 1, section II of Decree No. 388/2011 deals with special aids for severely-visually impaired persons.</p> <p>The Respondent should produce all Documents falling under this category.</p>	<p>The request, as amended by the Claimant, is granted.</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			<p>selected provisions of the Act No. 329/2011 –, refers to several types of impairment and has a broad scope (e.g. it addresses special identity cards, lists types of special aids for which the state provides allowances or states requirements for guide dogs).</p> <p>Claimant's request is too broad. Since Claimant does not specify its request, it remains unclear to which provisions of the law and/or the Decree it refers to and, hence, to instructions on which topics Claimant refers to. Claimant also does not indicate to which types of impairment it refers.</p> <p>Therefore, Respondent objects to this request in its entirety.</p>		

B. Disclosure of the content of the Claimant's assistive technology solutions applications to third parties:

12.	<p>The Claimant requests:</p> <p>i. all Documents on the Respondent's files which <i>"conclude that on some occasions the Labour Office of the Czech Republic did not respect the said rules fully"</i> as described and referred to in Ms Jirková's letter to Ms Samková, C-0020; and</p>	<p>The Respondent's own guidelines provided that the details of an allowance for aid application may not be disclosed to <i>"a competing subject"</i>²³ and the Respondent admitted that the details of the Claimant's assistive technology solutions applications were</p>	<p>Respondent does not object to this request.</p> <p>However, regarding point (i) of the request, Respondent is unable to provide any such documents. Respondent changed its electronical</p>	<p>The Respondent's inability to provide Documents under this category is unacceptable as the Respondent was well aware by December 2015 that it was under a duty, as a Party to these proceedings, to preserve and not to destroy or</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>
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²³ **C-0020**, ¶ 3 and **C-0040**, ¶ 2.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>ii. the notice prepared for Deputy Minister for social and family policy Dr. Čáslava about acquired findings addressed to the General Director of the Labour Office, Ms Marie Bilková, as described and referred to in Ms Jirková's e-mail to Mr Buchal, C-0035.</p>	<p>disclosed by the Respondent on multiple occasions. Mgr Katerina Jirková, Director of the Department of Social and Family Policy informed Mrs Klara Samková, the Claimant's then lawyer, in a letter dated 31 October 2013 that the documents in the Respondent's files concluded that "<i>on some occasions the Labour Office of the Czech Republic did not respect the said rules fully.</i>"²⁴</p> <p>Furthermore, in an e-mail dated 30 October 2013, Ms Jirková informed Mr Buchal that "<i>we have prepared for Deputy Minister for social and family policy PhDr. Čáslava a notice about acquired findings addressed to Ms General Director of Labour Office of Czech Republic In. Marie Bilkova.</i>"²⁵</p> <p>These Documents are relevant to the case and material to its outcome as they will shed light on information wrongly disclosed by the Respondent to the Claimant's competitors, against the Respondent's internal rules, and will shed light on whether the notice prepared for Deputy Minister for social and family policy Dr. Čáslava</p>	<p>communication platform in December 2015. Due to this change, Respondent lost any such documents.</p> <p>Regarding point (ii) of the request, Respondent was not able to locate any such documents yet.</p>	<p>delete Documents that could be relevant to this case.</p> <p>Furthermore, the notice requested under sub-category (ii) is specifically referred to by the Respondent in the last paragraph of C-0035:</p> <p>Ms Jirková informed Mr Buchal that "<i>[they] have prepared for Deputy Minister for social and family policy PhDr. Čáslava a notice about acquired findings addressed to Ms General Director of Labour Office of Czech Republic Ing. Marie Bilková.</i>"</p> <p>There is therefore no doubt that this Document exists. The Respondent has no credible reason to refrain from producing this Document.</p> <p>If the Respondent fails to produce the requested Documents, adverse inferences should be drawn from such failure.</p> <p>The requested Documents include admissions by the Respondent, as do C-0035 and C-0020, that the Respondent acted in breach of Czech law.</p>	

²⁴ **C-0020**, ¶ 4.

²⁵ **C-0035**, ¶ 4.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		followed a fair and impartial procedure.			
13.	<p>The Claimant requests:</p> <ul style="list-style-type: none"> i. all Documents which record and/or relate to communications between the Labour Office(s) and/or the Ministry and Ergones in relation to Mr [...] application referred to in ¶ 4, page 4 of C-0015; ii. all Documents which record and/or relate to the response sent by Ergones in relation to Mr [...] application referred to in ¶ 4, page 4 of C-0015; iii. all Documents which record the response to the e-mail dated [...] to Tyflocentrum from Ms Lenda Smidova's (an officer working for the Respondent), R-0013; iv. all Documents which record and/or relate to communications between the Labour Office(s) and/or the Ministry and Ergones (other than the draft invoice from Ergones dated [...]) in relation to Mr [...] second application dated 17 March 2014 referred to in ¶ 238 of the Respondent's Counter-Memorial and ¶ 2, page 15 of R-0018; v. "the resolution on appointment" of the Labour office in Olomouc (Ref. No 242270/14/OL) sent to Mr Martin Ludma on 24 April 2014, as referred to in ¶ 1, page 4 of R-0018; 	<p>We have seen that the Respondent has disclosed "parameters" included in the Claimant's and/or Brailcom's assistive technology solutions applications to the Claimant's competitors while conducting "assessment" procedures.⁴⁴ The Respondent admits that "Initially, the Labour Offices then sent the list of components to several competitors of the provider who had prepared the list."⁴⁵</p> <p>The Documents on record make it clear that there are further Documents evidencing communications between the Claimant's competitors and the Respondent as the Respondent explicitly refers to these communications.</p> <p>The requested Documents are thus likely to evidence the extent of information disclosed to the Claimant's competitors and provide further information on whether the Respondent's internal procedures of "assessment" of the Claimant's assistive technology solutions applications were neutral and fair.</p>	<p>Respondent does not object to points (i) - (x) and (xiii) of this request.</p> <p>However, regarding points (iii) and (x) of the request Respondent was not able to locate any such documents yet.</p> <p>Regarding points (ix), (xi) and (xii) of the request, Respondent is still in the process of locating any such documents.</p> <p>In regard of points (ix, f and m – q) of the request, Respondent notes that specific identification details (e.g. date of birth) are necessary to retrieve information for each of these cases.</p> <p>Regarding point (viii) Respondent notes that no such document is known to it.</p> <p>Furthermore, Respondent objects to points xi and xii of the request, except for the Documents "reviewed by Ms Katerina Jirková as referred to in ¶ 3 of her e-</p>	<p>The Claimant notes, regarding sub-category (iii) that the e-mail dated [...], from Ms Lenda Smidova, R-0013, was sent to "vonesova@tyflocentrum-ol.cz." This e-mail address must belong to Ms Eva Vonešová of TyfloCentrum Olomouc.</p> <p>The Respondent refers, in the last paragraph of page 5, C-0015 to an evaluation sent by Ms Vonesova to the Respondent on [...] "where she commented on the [Claimant's] individual offers."</p> <p>Documents relating to Ms Vonešová's evaluation, referred to in C-0015, are some of the Documents captured by sub-category (iii). These are very specific and the Respondent does not have any credible reason as to why it is not able to locate them. This is particularly relevant as the Respondent relied on Ms Vonešová's evaluation as a basis for its decision not to grant Mr [...] application as requested.</p>	<p>The Tribunal notes that the Respondent does not object to sub-requests (i) to (x) and (xii).</p> <p>Sub-requests (xi) and (xii), as amended by the Claimant, are granted.</p>

⁴⁴ See for example **C-0020**, ¶ 4 in addition to the above.

⁴⁵ Respondent's Counter-Memorial, ¶ 194.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>vi. the letter of instructions sent from the "Labour Exchange Authority of the Czech Republic" and/or a related entity to Mr Ludma for the preparation of an expert report No. 107/2014 in relation to Mr [...] application for an assistive technology solution;²⁶</p> <p>vii. all Documents recording and/or relating to the request sent to Mr Ludma on 24 June 2014 to provide additional information to the opinion as referred to in last paragraph on page 4 of R-0018;</p> <p>viii. the letter of instructions sent by the Labour Office or the Ministry or a related entity to Ms Eva Vonešová of TyfloCentrum for the preparation of expert report in relation to Mr [...] first application for an assistive technology solution as referred to in the last paragraph of page 5, C-0015;</p> <p>ix. all further Documents and/or communications between the Labour Office (and/or the Ministry) and Adaptech, Spektra, Ergones, TyfloCentrum, ACE Design, Unioptik, and Galop in relation to the cases of:</p> <p>a. Ms [...] (including but not limited to the Documents evidencing correspondence with Spektra and Unioptik referred to in ¶ 4, page 2 of C-0025 and in ¶ 258 of the Respondent's Counter-Memorial);</p> <p>b. Mrs [...] (including but not limited to the Documents</p>	<p>The Claimant is in possession of some documentation relating to Mr > @ applications provided to the Claimant on 6 July 2014 (as referred to on page 5 of R-0018). However, the requested Documents are not within the Claimant's custody or control.</p>	<p><i>mail to Mr Buchal dated 30 October 2013, C-0035 and hereafter to Mrs Samková dated 31 October 2013, ¶ 4 of C-0020</i>" referred to in point xii.</p> <p>Article 3(3)(a)(ii) of the IBA Rules stipulates that a document request shall contain a description in sufficient detail of a narrow and specific requested category of documents and indicate the subject matter of these documents.</p> <p>Claimant's respective requests are too broad, because they are not limited to the cases submitted to the current proceedings, but refer to all cases ever submitted by Claimant. Claimant in total submitted over 300 applications (see Exhibits C-0011 and C-0012). Claimant did not bring forward any arguments in respect of these further cases.</p> <p>Claimant never even alleged any wrongdoing in individual of those cases. Hence, its request is a "fishing expedition" attempting to determine</p>	<p>It is clear that these Documents exist and that the Respondent has possession, custody or control of them.</p> <p>The Respondent will have had two months to locate these specific Documents and should provide all of them by 8 May 2017.</p> <p>The same points go for sub-category (viii). In addition to the above, the Claimant adds, for the avoidance of doubt, that the reference to "letter of instructions" should not be understood in a very narrow technical sense but that it includes all Documents as defined in the IBA Rules, such as any written communications including e-mails. Although the Respondent "<i>notes</i> [in relation to sub-category (viii)] <i>that no such document is known to it.</i>", the Claimant is in possession of R-0013, which is a Document captured under this request. The Respondent's allegation therefore is incorrect.</p> <p>With regards to sub-categories (ix. f and m – q), the Claimant submits the dates of birth for:</p> <p>Mr [...]: > @</p>	

²⁶ **R-0019**.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>evidencing correspondence with Spektra and Galop referred to in ¶ 1, page 3 of C-0027 and in ¶ 263 of the Respondent's Counter-Memorial);</p> <p>c. Mr [...]; (including but not limited to Documents recording or evidencing the phone call with the supplier referred to in ¶ 1, page 3 of C-0028 and in ¶ 264 of the Respondent's Counter-Memorial);</p> <p>ci. Ms [...] (including but not limited to the Documents evidencing and/or relating to the request for a price offer the Respondent made and the responses to the request for offer around 20 June 2014, as referred to in ¶ 21 of Ms [...] witness statement);</p> <p>cii. Mr [...];²⁷</p> <p>ciii. Mr [...]²⁸</p> <p>civ. Ms [...]²⁹</p> <p>cv. Mr [...];³⁰</p> <p>cvi. Mr [...];³¹</p>		<p>whether there may be any documents of interest in Respondent's files.</p> <p>What is more, in a substantial part of these applications Claimant's order was executed in original composition and price.</p>	<p>Mr [...]: [...]</p> <p>Ms [...]:⁴⁶ [...]</p> <p>Ms [...]: [...]</p> <p>Mr [...]: [...]; and</p> <p>Mr [...]: [...].</p> <p>Regarding sub-categories (ix), (xi) and (xii), the Respondent will have had two months to locate these specific Documents and should be able to provide all of them by 8 May 2017.</p> <p>The Claimant narrows sub-categories (xi) and (xii) as follows:</p> <p>xi. a. all Documents evidencing correspondence between the Labour Office (and/or the Ministry) and Adaptech, Spektra, Ergones,</p>	

²⁷ Respondent's Counter-Memorial, ¶¶ 281 to 283.

²⁸ The Claimant's witness.

²⁹ Witness Statement of [...] ¶ 9.

³⁰ Respondent's Counter-Memorial, ¶¶ 267 to 270.

³¹ Respondent's Counter-Memorial, ¶¶ 271 to 274.

⁴⁶ The spelling of this name has been corrected.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>j. Mr [...];³²</p> <p>k. Mr [...];³³</p> <p>l. Mr [...];³⁴</p> <p>m. Mr [...];³⁵</p> <p>n. Ms [...];³⁶</p> <p>o. Ms [...];³⁷</p> <p>p. Mr [...];³⁸ and</p> <p>q. Mr [...].³⁹</p> <p>x. all Documents evidencing correspondence between the Labour Office (and/or the Ministry) and any other companies in relation to the above-mentioned cases;⁴⁰</p> <p>xi. all Documents evidencing correspondence between the Labour Office (and/or the Ministry) and Adaptech, Spektra, Ergones, Tyflocentrum, ACE Design, Uniopik, Galop conducted in order to "assess" the</p>			<p>Tyflocentrum, ACE Design, Uniopik, Galop conducted in order to "assess" the assistive technology solutions applications submitted by the Claimant in relation to incomplete order numbers: 20,26,28,29,30,31 to 33, 42,48,49,58,63,77,79, which are listed on pages 1 to 2 of C-0012; and cancelled order numbers: 45,49,50,54,56,57, which are listed on pages 3 to 5 of C-0012;</p> <p>b. all Documents evidencing correspondence between the Labour Office (and/or the Ministry) and Adaptech, Spektra, Ergones, Tyflocentrum, ACE Design, Uniopik, Galop conducted in order to "assess" the assistive technology solutions applications of</p>	

³² Respondent's Counter-Memorial, ¶¶ 275 to 280,

³³ The Claimant's witness.

³⁴ The Claimant's witness.

³⁵ 9 year old son of the Claimant's witness [...]

³⁶ The Claimant's Amended-Memorial, ¶ 83.

³⁷ The Claimant's Amended-Memorial, ¶ 83.

³⁸ The Claimant's Amended-Memorial, ¶ 83.

³⁹ The Claimant's Amended-Memorial, ¶ 83.

⁴⁰ Respondent's Counter-Memorial, ¶ 194, Witness Statement of Milena Průžková, ¶ 7.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>assistive technology solutions applications submitted by the Claimant;⁴¹</p> <p>xii. All Documents evidencing correspondence between the Labour Office and any other companies conducted in order to "assess" the assistive technology solutions applications submitted by the Claimant⁴² including but not limited to the Documents reviewed by Ms Katerina Jirková as referred to in ¶ 3 of her e-mail to Mr Buchal dated 30 October 2013, C-0035 and her letter to Mrs Samková dated 31 October 2013, ¶ 4 of C-0020; and</p> <p>xiii. All expert reports, apart from R-0019, obtained in relation to the assistive technology solutions applications submitted by the Claimant⁴³ for and on behalf of Mr [...], including but not limited to the expert report obtained from Ms Eva Vonešová of TyfloCentrum in relation to Mr [...] first application (as noted on page 5 of C-0015).</p>			<p>cancelled orders listed on pages 3 to 5 of C-0012 because the "allowance was approved in such a way that the order could not be realized.";</p> <p>xii. all Documents evidencing correspondence between the Labour Office and any other company, that is not listed in sub-category (xi) above, conducted in order to "assess" the assistive technology solutions applications submitted by the Claimant in relation to incomplete order numbers: 20,26,28,29,30,31 to 33, 42,48,49,58,63,77,79, which are listed on pages 1 to 2 of C-0012 and cancelled order numbers:45,49,50,54,56,57, which are listed on pages 3 to 5 of C-0012; including but not limited to the Documents reviewed by Ms Katerina Jirková as referred to in ¶ 3 of her e-mail to Mr Buchal dated 30 October 2013, C-0035 and her letter to Mrs Samková dated 31 October 2013, ¶ 4 of C-0020.</p>	
14.	The Claimant requests the Documents recording and/or relating to the phone discussion between Mr Hrdinka and Ms	On 1 July 2013, Ing. Tomáš Hrdinka of Spektra, one of the Claimant's competitors, sent an	Respondent does not object to this request.	The Claimant notes that the Respondent was able to provide the "Record of a	The Tribunal notes that the Respondent

⁴¹ Respondent's Counter-Memorial, ¶ 159.

⁴² Respondent's Counter-Memorial, ¶ 159.

⁴³ Respondent's Counter-Memorial, ¶ 194.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>Laudová on or around 1 July 2013, including but not limited to notes, recordings or other written documents.</p>	<p>e-mail to Jitka Laudová of the Labour Office.⁴⁷ This e-mail was sent in response to a request for an offer the Labour Office had sent Spektra in relation to Mr [...] application.⁴⁸ The e-mail from Mr Hrdinka to Ms Laudová referred to a telephone conversation which took place between them on or around 1 July 2013.⁴⁹</p> <p>It is clear that the Respondent produced Documents in relation to phone calls between the Labour Office and third parties as the Respondent has produced notes of a telephone conversation which took place between Mr Buchal and the Labour Office.⁵⁰</p> <p>It is also clear that the phone call between Mr Hrdinka of Spektra and Ms Laudová of the Labour Office relates to the "parameters" of an application submitted by Brailcom on behalf of the Claimant.</p> <p>The note of this telephone conversation is likely to evidence the Respondent's approach to the disclosure of the parameters included in the</p>	<p>However, Respondent has thoroughly searched its archives, but could not locate any documents falling in this category.</p>	<p><i>telephone call</i>" between the Claimant and the Respondent in R-0014, with specific details of the call.</p> <p>This shows that the Respondent does keep notes of phone calls.</p> <p>If these Documents do not exist, it is telling that the Respondent did not take a note of this call.</p> <p>The Respondent should be ordered to provide all Documents in its possession, custody or control relating to this call by 8 May 2017.</p>	<p>does not object to the request.</p>

⁴⁷ **R-0016**.

⁴⁸ Respondent's Counter-Memorial, ¶ 224; **C-0015**, p. 4.

⁴⁹ **R-0016**.

⁵⁰ See for example **R-0014**.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>assistive technology solutions applications submitted by the Claimant and/or Brailcom, as well as the extent of information disclosed by the Respondent to Spektra.</p> <p>This document will also show whether the Respondent's conduct gave Spektra an unfair competitive advantage.</p>			
15.	<p>The Claimant requests all Documents consisting of applications for allowances submitted in years 2011-2014, invoices and pertaining Labour Offices' decisions on such applications relating to the following aids: (1) Computer reader for the blind, (2) Digital notepad with Braille output, (3) Electronic communication aid, (4) Braille display, (5) Desktop computer magnifier, (6) Digital notepad and (7) Camera magnifier, supplied by the following suppliers: (1) GALOP, s.r.o., (2) SPEKTRA, výrobní družstvo nevidomých, (3) Tyflocentrum Olomouc, o.p.s. (Ergones), (4) ACE Design, s.r.o. and (5) Adaptech s.r.o.</p>	<p>At ¶ 184 of the Counter-Memorial, the Respondent alleges that the Claimant and Brailcom were inducing blind people to "apply for allowances for unnecessary aids at prices far above those of its competitors" and at ¶ 323 of the Counter-Memorial that Claimant and Brailcom's "business model was predicated on being able to sell overpriced aids to blind persons." The Respondent also relies on the Expert Report of Mr Qureshi to allege in ¶ 504 that the Claimant's competitors "can operate with far lower margins." At ¶ 158 of Mr Qureshi's expert report, he compares the Claimant's prices with the "average price" but these average prices (calculated from lists of allowances paid out in Exhibits SQ-20 to SQ-23) do not reveal the provenance of assistive technology solutions or how the prices were calculated.</p> <p>The Documents on record do not provide the Claimant with</p>	<p>Respondent will disclose data on the amount of money provided per year per specific type of aid.</p> <p>However, Respondent does not include the suppliers in its statistics. In order to comply with Claimant's request, Respondent would have to review each and every of the very numerous files pertaining to all allowances submitted in 4 years. Such a request clearly has to be considered as overly burdensome for Respondent.</p> <p>What is more, from 01.01.2012 until 31.12.2013 the allowances have been provided through an information system that does not exist anymore. Respondent's system has been replaced and within that process, some of the data has been</p>	<p>The Claimant narrows its request to (1) GALOP, s.r.o., (2) SPEKTRA, výrobní družstvo nevidomých, (3) Tyflocentrum Olomouc, o.p.s. (Ergones) and (4) ACE Design, s.r.o.</p> <p>The Respondent has not shown with reasonable likelihood that these Documents were lost or destroyed and should be ordered to provide them.</p> <p>The Claimant also requests all Documents, apart from Exhibits SQ-20 to SQ-23, on which Mr Qureshi based his calculations which relate to the Respondent's conclusion in ¶ 504 of its Counter-Memorial that the Claimant's competitors "can operate with far lower margins."</p> <p>The Claimant further requests all Documents relating to assistive technology solutions and how the prices were</p>	<p>The Tribunal notes that the Respondent says that it "will disclose data on the amount of money provided per year per specific type of aid", that it has lost "some of the data" and that it "objects to this request in its entirety".</p> <p>The Tribunal orders the Respondent to "disclose data on the amount of money provided per year per specific type of aid".</p> <p>Otherwise, the request, as amended, is granted subject to the execution by the Claimant of a confidentiality undertaking (see para. 5 of Procedural Order No. 8).</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>sufficient information to analyse or compare allegedly "average" prices or whether these relate to comparable assistive technology solutions.</p> <p>The Claimant requires sufficient information and documentation to review these allegedly "average" prices. This is relevant to the case and material to its outcome because they would shed light on "average" prices and to what extent prices (and profit margins) of competitors can be compared to the Claimant and the way in which the Respondent assessed applications from the Claimant's competitors.</p>	<p>lost. Hence, Respondent does not know if the respective data even exists.</p> <p>Furthermore, in its Amended Memorial Claimant complains that Respondent "<i>illegally disclosed [information] pertained to three distinctive areas: (i) A11Y's know-how related to its Solutions, (ii) A11Y's pricing policy, and (iii) identity of A11Y's clients.</i>" (see 65 of the Amended Memorial) Claimant further asserts that "<i>it is beyond any doubt that [Respondent was] not allowed to disclose [this] sensitive information that is part of A11Y's know-how [...] Czech competition law is clear about this issue. In addition, an internal regulation of the Labor Office, Ms. [...]s Decision, clearly stated that such disclosure was not allowed.</i>" (See para 129 of the Amended Memorial)</p> <p>With this request Claimant is essential asking Respondent to disclose such information of Claimant's competitors that it itself claims to be illegal to disclose. For</p>	<p>calculated, with reference to ¶ 158 of Mr Qureshi's report.</p> <p>These Documents will shed light on Mr Qureshi's comparison methods and the reliability of the sources of information which relate to his view. The requested category of Documents is narrow and specific and relevant to the case and material to its outcome.</p> <p>The Documents requested under this category are being requested in relation to an expropriation claim within the context of this arbitration. The Respondent's comparison with its own unlawful actions is misplaced.</p> <p>Although the evidence and Documents produced in this arbitration are confidential, the Claimant is prepared to take further precautions of confidentiality under the IBA Rules should this be necessary.</p>	

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			these reasons, Respondent objects to this request in its entirety.		
16.	The Claimant requests Documents setting out the accounts/profitability of the companies noted in Appendix C3 of the Expert Report of Mr Qureshi for the years 2013 and 2014, namely Galop, Adaptech, Spektra, ACE, and Tyflocentrum/Ergones.	<p>At ¶¶ 469 and 491 of its Counter-Memorial, the Respondent stated with reference to ¶ 162 of the Expert Report from Mr Qureshi that <i>“Claimant’s competitors remain in business with a profit margin of 22%.”</i></p> <p>The Documents on record only cover 2011 and 2012. However, Documents for other years, specifically 2013 and 2014, are relevant to the case and material to its outcome as they will shed light on any comparison of profitability of the Claimant’s competitors and the allegations made by the Respondent.</p>	<p>The data used by Mr Qureshi to set out the accounts/profitability of the companies in Appendix C3 derives from Exhibits SQ-45 to SQ-57. These Exhibits are all publicly available Profit and Loss Statements and/or Annual Reports of the respective companies.</p> <p>Hence, all documents that Claimant is requesting are publicly available.</p> <p>Therefore, it would not be unreasonably burdensome for Claimant to produce this document (<i>cf.</i> Article 3(3)(c)(i) IBA Rules).</p> <p>What is more, with reference to Appendix C3 of the Expert Report, Claimant alleges that the documents on record only cover 2011 and 2012. Respondent notes that Appendix C3 displays on its first page all data available to Respondent for the years 2011/2012. On the following page, Appendix C3 displays all data available to Respondent for the years 2013/2014.</p>	<p>The Claimant conducted research to find publicly available information. However, the Claimant could not obtain the following:</p> <ul style="list-style-type: none"> i. The source of information for SQ-50 is not publicly available as the Trade Registry does not provide Adaptech’s accounts. The Claimant requests the Respondent to provide Documents relating to the provenance of information in SQ-50; ii. Adaptech’s financial accounts for 2011 and 2014 are not publicly available. The Claimant requests the Respondent to provide these Documents to the extent that these are in the possession, control or custody of the Respondent. These Documents are not in the possession, control or custody of the Claimant; iii. Galop’s financial accounts for 2013 and 2014 are not publicly available. The Claimant requests the Respondent to provide these Documents to the extent that these are in the 	The request, to the extent that it refers to documents which are not publicly available, is granted.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
			Therefore, Respondent objects to this request in its entirety.	<p>possession, control or custody of the Respondent. These Documents are not in the possession, control or custody of the Claimant and it is unable to obtain them from public records;</p> <p>iv. Spektra's financial accounts for 2014, as these are not publicly available. The Claimant requests the Respondent to provide these Documents to the extent that these are in the possession, control or custody of the Respondent. These Documents are not in the possession, control or custody of the Claimant and it is unable to obtain them from public records; and</p> <p>v. The source of information for SQ-55 is not publicly available. The Claimant requests the Respondent to provide Documents relating to the provenance of information in SQ-55.</p>	
C. Relationship between the Respondent and the Claimant's competitors					
17.	The Claimant requests all Documents, aside from Tyflocentrum's annual reports, recording the date and/or amount and/or purpose of any subsidies provided to Tyflocentrum Olomouc o.p.s. and/or Tyflocentrum Brno o.p.s. from	Ergones is one of the Claimant's competitors, and Ergones was set up as part of Tyflocentrum Olomouc. This was confirmed by Mr Qureshi in fn. 4 of	All documents Claimant is requesting are publicly available by simply filing	The Respondent's interpretation of the IBA Rules is incorrect.	The request is granted.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>Czech public sources or from EU funds allocated by Czech public sources.</p>	<p>Appendix C to his Expert Report and in Tyflocentrum's 2011 Annual Report at SQ-48.</p> <p>The Claimant pointed out in ¶ 138 of its Amended Memorial that Tyflocentrum received a social enterprise subsidy,⁵¹ but it provided similar services to A11Y through Ergones</p> <p>The Labour Office and/or the Ministry referred the Claimant's clients to Tyflocentrum Olomouc for assessment,⁵² or instructed Tyflocentrum Olomouc to conduct an "expert review" of the Claimant's assistive technology solutions applications.⁵³ Mr Krazjinger, for example, was subject to both.</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the Respondent's funding support provided directly or indirectly to the Claimant's competitors.</p> <p>The Documents are not in the Claimant's possession or control, other than the annual reports of Tyflocentrum exhibited to the Expert Report of Mr Qureshi (which do not</p>	<p>requests under Act 106/2006, Art 8 b.</p> <p>Therefore, it would not be unreasonably burdensome for Claimant to produce this document (cf. Article 3(3)(c)(i) IBA Rules).</p> <p>Therefore, Respondent objects to this request in its entirety.</p>	<p>Article 3(5) of the IBA Rules provide that the reasons for an objection "<i>shall be any of those set forth in Article 9.2 or a failure to satisfy any of the requirements of Article 3.3</i>"</p> <p>The Claimant notes that the Respondent's objection does not pertain to any of the grounds provided for in Articles 3.3 or 9.2 of the IBA Rules.</p> <p>As the Respondent does not base its objection on any of the grounds provided for in the IBA Rules, it should be ordered to provide these Documents.</p> <p>In particular, the Respondent mischaracterises Article 3(3)(c)(i) of the IBA Rules. This Article sets out alternative (not cumulative) statements to include in a request– either that the Documents are not in the requesting party's possession, custody or control <u>or</u> a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such Documents.</p> <p>In this case, the requested Documents are not in the possession, custody of control</p>	

⁵¹ **C-0034**.

⁵² Claimant's Amended Memorial, ¶ 66; Letter from the Labour Office to Mr [...] dated 27 June 2013, **C-0013**.

⁵³ See for example Claimant's Amended Memorial, ¶ 68; Decision of the Labor Office regarding the Allowance for Mr. [...] dated October 29, 2013, **C-0015**.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		specify the source of operating subsidies).		<p>of the Claimant. There is therefore no basis for the Respondent to suggest that an "<i>unreasonably burdensome</i>" test would apply to this document request.</p> <p>In any event, it is misconceived for the Respondent to suggest that it can avoid complying with its disclosure obligation in this arbitration by referring to any potential obligation on it under Czech legislation.</p>	
D. Meetings between the Parties and/or between the Claimant's clients and the Respondent:					
18.	The Claimant requests the Documents recording and/or relating to the phone discussion between Ms [...] and Mr Rames which took place in October 2014 including but not limited to notes, recordings or other written documents.	<p>Ms [...], one of the Claimant's witnesses, explained in ¶ 26 of her witness statement that she called the Labour Office in October 2014 in relation to her application for an assistive technology solution and she had a discussion with Mr Rames during which she was told "<i>the aid is three times overpriced and the office shall not provide the allowance for it to you.</i>"</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of the Respondent's approach to the Claimant's clients and the assistive technology solutions applications submitted by the Claimant and/or Brailcom, including wrongful pressure placed by the Respondent on</p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p>	<p>It is very likely that these Documents exist as it is clear from R-0014 that the Respondent keeps records of phone calls.</p> <p>In any case, it would be extraordinary if the Respondent and, in particular, the Labour Offices did not keep records or notes of their communications with the applicants relating to their applications.</p> <p>Records of communications with applicants conducted in relation to their applications for aids would be required for the Respondent's officers to be able to report these communications.</p> <p>It strains credulity to expect the Claimant and the Tribunal to</p>	The Tribunal notes that the Respondent does not object to the request.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>the Claimant's clients to use the Claimant's competitors and not to use the Claimant's assistive technology solutions.</p> <p>These Documents are not in the Claimant's possession, custody, or control as they relate to the Respondent's internal records and/or notes of meetings.</p>		<p>believe that all of these communications were made orally and that no Documents as described in the IBA Rules exist.</p> <p>The Respondent will have had two months to locate these Documents and should be able to provide all of them by 8 May 2017.</p>	
19.	<p>The Claimant requests the Documents recording and/or relating to the meetings between Mr [...] and Ms Sikorová which took place respectively at the Labour Office in September 2013 and at Mr [...] home in January 2014 including but not limited to notes of the meetings, recordings or any other written documents.</p>	<p>Mr [...], one of the Claimant's witnesses, met with Bc Ivona Sikorová at the Labour Office in September 2013, during which Ms Sikorová tried to convince Mr [...] that aids from A11Y were overpriced and that other suppliers offer cheap aids in exactly the same version.⁵⁴ Ms Sikorová repeated her position during a meeting in January 2014 at Mr [...] home.⁵⁵</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of the Respondent's approach to Claimant's clients and the assistive technology solutions applications submitted by the Claimant and/or Brailcom, including wrongful pressure placed by the Respondent on the Claimant's clients to use the</p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p>	<p>It is very likely that these Documents exist as it is clear from R-0014 that the Respondent keeps records of its communications.</p> <p>In any case, it would be extraordinary if the Respondent and, in particular, the Labour Offices did not keep records or notes of their meetings with the applicants relating to their applications.</p> <p>Records of meetings with applicants conducted in relation to their applications for aids would be required for the Respondent's officers to be able to report the outcome of these meetings.</p> <p>It strains credulity to expect the Claimant and the Tribunal to believe that no notes of meeting or other Documents as</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

⁵⁴ Witness Statement of [...], ¶ 8. ⁵⁵ Witness

Statement of [...], ¶ 15.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>Claimant's competitors and not to use the Claimant's assistive technology solutions.</p> <p>These Documents are not in the Claimant's possession, custody, or control as they relate to the Respondent's internal records and/or notes of meetings.</p>		<p>described in the IBA Rules exist.</p> <p>The Respondent will have had two months to locate these Documents and should be able to provide all of them by 8 May 2017.</p>	
20.	<p>The Claimant requests the Documents recording and/or relating to the meetings between Ms [...] and officers Mgr [...] and [...] on 25 February 2014 at Ms [...] home including but not limited to notes of the meeting, recordings or any other written documents.</p>	<p>Ms [...], one of the Claimant's witnesses, met officers [...] and Bc [...] on 25 February 2014 at her home during which they repeatedly advised "<i>the office knows A11Y LTD company very well and is not satisfied with it</i>" and "<i>the aids from A11Y LTD company are overpriced</i>" and even mentioned that A11Y was involved in "<i>fraud</i>."⁵⁶</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of Respondent's approach to Claimant's clients and the assistive technology solutions applications submitted by the Claimant and/or Brailcom, including wrongful pressure placed by the Respondent on the Claimant's clients to use the Claimant's competitors and not to use the Claimant's assistive technology solutions.</p>	<p>Respondent does not object to this request.</p> <p>Respondent is still in the process of searching for such documents and will produce any such documents that it is able to locate.</p>	<p>It is very likely that these Documents exist as it is clear from R-0014 that the Respondent keeps records of its communications.</p> <p>In any case, it would be extraordinary if the Respondent and, in particular, the Labour Offices did not keep records or notes of their meetings with the applicants relating to their applications.</p> <p>Records of meetings with applicants conducted in relation to their applications for aids would be required for the Respondent's officers to be able to report the outcome of these meetings.</p> <p>It strains credulity to expect the Claimant and the Tribunal to believe that no notes of meeting or other Documents as described in the IBA Rules exist.</p> <p>The Respondent will have had two months to locate these</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

⁵⁶ Witness Statement of [...] ¶¶ 8 – 9.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
		<p>These Documents are not in the Claimant's possession, custody, or control as they relate to the Respondent's internal records and/or notes of meetings.</p>		<p>Documents and should be able to provide all of them by 8 May 2017.</p>	
21.	<p>The Claimant requests the Documents recording and/or relating to the meetings between Mr [...] and officers of the Labour Office in Ostrava including but not limited to notes of the meetings, recordings or any other written documents.</p>	<p>As noted in his witness statement, Mr [...] went to the Labour Office in Ostrava in May 2014 where officers advised him "<i>We have a bad experience with this company [...] things offered by this company can be obtained from an internet shop much cheaper</i>".⁵⁷</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of the Respondent's approach to Claimant's clients and the assistive technology solutions applications submitted by the Claimant and/or Brailcom, including wrongful pressure placed by the Respondent on the Claimant's clients to use the Claimant's competitors and not to use the Claimant's assistive technology solutions.</p> <p>These Documents are not in the Claimant's possession, custody, or control as they relate to the Respondent's internal records and/or notes of meetings.</p>	<p>Respondent does not object to this request.</p> <p>However, Respondent was not able to locate any such documents yet.</p>	<p>It is very likely that these Documents exist as it is clear from R-0014 that the Respondent keeps records of its communications.</p> <p>In any case, it would be extraordinary if the Respondent and, in particular, the Labour Offices did not keep records or notes of their meetings with the applicants relating to their applications.</p> <p>Records of meetings with applicants conducted in relation to their applications for aids would be required for the Respondent's officers to be able to report the outcome of these meetings.</p> <p>It strains credulity to expect the Claimant and the Tribunal to believe that no notes of meeting or other Documents as described in the IBA Rules exist.</p> <p>The Respondent will have had two months to locate these Documents and should be able to provide all of them by 8 May 2017.</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>

⁵⁷ Witness Statement of [...], ¶ 8.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
22.	<p>The Claimant requests the Documents which relate to communications in which Ms Lada Vacková informed Mr [...] that his aid application was not useful to him and that the allowance requested by him was too high and it probably did not belong to Mr [...] including but not limited to notes of the meeting, recordings or any other written documents.</p>	<p>Mr [...] explained in ¶ 11 of his witness statement that "<i>Lada Vacková from Labour Office, contact office Nachod, told me in 2012 that she does not know how the aid is any useful to me and she suggested to me that the allowance requested by [me] was too high and that it did not belong to me.</i>"</p> <p>The Documents are relevant to the case and material to its outcome as they are likely to shed light on the nature of the Respondent's approach to Claimant's clients and the assistive technology solutions applications submitted by the Claimant and/or Brailcom, including wrongful pressure placed by the Respondent on the Claimant's clients to use the Claimant's competitors and not to use the Claimant's assistive technology solutions.</p> <p>These Documents are not in the Claimant's possession, custody, or control as they relate to the Respondent's internal records and/or notes of meetings.</p>	<p>Respondent does not object to this request.</p> <p>However, Respondent was not able to locate any such documents yet.</p>	<p>It is very likely that these Documents exist as it is clear from R-0014 that the Respondent keeps records of its communications.</p> <p>In any case, it would be extraordinary if the Respondent and, in particular, the Labour Offices did not keep records or notes of their meetings with the applicants relating to their applications.</p> <p>Records of meetings with applicants conducted in relation to their applications for aids would be required for the Respondent's officers to be able to report the outcome of these meetings.</p> <p>It strains credulity to expect the Claimant and the Tribunal to believe that no notes of meeting or other Documents as described in the IBA Rules exist.</p> <p>The Respondent will have had two months to locate these Documents and should be able to provide all of them by 8 May 2017.</p>	<p>The Tribunal notes that the Respondent does not object to the request.</p>
23.	<p>Documents recording or evidencing the meetings between:</p> <ul style="list-style-type: none"> i. the Claimant and Ms Kateřina Jirková, Director of Social and Family Policy in the Ministry on 10 September 2013 (other than the meeting note of the meeting on 10 	<p>The Documents are relevant to the case and material to its outcome as they will shed light on the representations and admissions made by the Respondent to the Claimant regarding the Respondent's approach to the assessment of</p>	<p>Regarding point (i) of the request, Respondent was not able to locate any such documents yet.</p> <p>Furthermore, Claimant is requesting documents recording or evidencing</p>	<p>The Claimant requests Documents created by the Respondent, including but not limited to Documents created for internal purposes, which would shed light on the Respondent's interpretation of these meetings. As such,</p>	<p>The request is granted in respect of minutes and notes prepared by the Respondent following these meetings.</p>

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
	<p>September 2013 sent to the Claimant by the Ministry);⁵⁸</p> <p>ii. the Claimant and Ms Kateřina Jirková, Ms Jana Pašková, and Mgr Lada Kunešová on 27 November 2013;⁵⁹</p> <p>iii. the Claimant and Ms [...], Director for Social Affairs Department in the General Directorate of the Labour Office, in February and March 2014;⁶⁰ and</p> <p>iv. the Claimant and Ms Lucie Vránová, Director of non-insurance social allowances for family and children Ms Průžková, the Director of Department of Non-Insurance Allowance Systems, between April and June 2014.⁶¹</p>	<p>the Claimant's and/or Brailcom's assistive technology solutions applications, including the Respondent's assurances that the Claimant's complaints about its treatment would be addressed and that they would be remedied.</p> <p>These Documents are not in the Claimant's possession, custody, or control (other than the meeting notes of the meeting on 10 September 2013 sent to the Claimant by the Ministry), as they relate to the Respondent's internal records and/or notes of meetings.</p>	<p>meetings at which it was itself present.</p> <p>Hence, Claimant is in the possession of any information that was exchanged during those meetings. Hence, while Claimant may not be in possession of the documents, it is in the possession of the information that they contain.</p> <p>Further, Claimant has not based any of its arguments on a possible discrepancy in both parties' perception of what was discussed during that meetings. Hence, the requested documents are of no relevance for the present case (<i>cf.</i> 3(3)(b) IBA Rules).</p> <p>Therefore Respondent object to this request in its entirety.</p>	<p>these Documents are different from those that were created by the Claimant and the Documents in the former category are undoubtedly not in the Claimant's possession, control or custody.</p> <p>There is no requirement to show a discrepancy of perception regarding discussions relating to Documents in order to obtain their disclosure. This is not a criterion under the IBA Rules.</p> <p>The requirements under the IBA Rules, on the other hand, are met. This is a sufficiently narrow and specific request of Documents which go to the assurances given to the Claimant by the Respondent's senior officers and which were relied on by the Claimant, as well as specific admissions made by the Respondent. These Documents will also shed light on the Respondent's approach to the assessment of the Claimant's assistive technology solutions applications.</p>	<p>Otherwise, the request is denied.</p>

⁵⁸ Witness Statement of Mr Jan Buchal, ¶¶ 103 and 125.

⁵⁹ Witness Statement of Mr Jan Buchal, ¶¶ 116 and 125.

⁶⁰ Witness Statement of Mr Jan Buchal, ¶ 125.

⁶¹ Witness Statement of Mr Jan Buchal, ¶ 125.

No.	Document(s) requested	Relevance and materiality	Respondent's response	Claimant's reply	Tribunal's decision
				<p>The Respondent therefore should be ordered to provide all Documents under this request by 8 May 2017.</p> <p>If the Respondent fails to do so, the Tribunal should draw adverse inferences from such failure.</p>	

Tribunal’s Decision in respect of the Respondent’s Request for the Production of Documents

Definitions:

Unless the context otherwise requires, defined terms shall have the following meaning:

Amended Memorial	Claimant’s Amended Memorial of 11 January 2016
Claimant	A11Y Ltd
Brailcom	Brailcom o.p.s
Memorial	Claimant’s Memorial of 30 May 2015
SoD	Respondent’s Statement of Defence of 31 August 2015
Claimant’s expert report	Expert Report on the Assessment of Damage by Prof. Robert C. Lind, Pavel Urban, Dr. Pavel Vacek dated 30 May 2015

1	2	3	4		5	6	7
No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submission	Comments			
1.	Respondent	<p>All documents in the possession, custody or control of Claimant, its branch offices and/or Brailcom relating to</p> <p>(1) the alleged transfer of Brailcom's business activities and client base to Claimant;</p> <p>(2) the alleged transfer of know-how from Brailcom to Claimant;</p> <p>(3) the alleged transfer of a brand from Brailcom to Claimant;</p> <p>(4) the alleged business agreement between Brailcom and Claimant.</p> <p>(5) Any other record of the purchase or sale of goods and/or services by Claimant showing a transfer of goods or funds</p>	<p>SoD, chapter 2.2: paras 33ss, 43, 50ss and 59ss; para 66.</p> <p>Amended Memorial paras 22ss</p>	<p>Claimant alleges that it took over Brailcom's business activities, client base, brand, know-how and its expert personnel.</p> <p>Respondent disputes this and maintains that Claimant did not have any business of its own before the Request for Arbitration was filed.</p> <p>The requested documents will establish that the business allegedly conducted by Claimant was still conducted by Brailcom, as the latter's business was not transferred to Claimant. The documents will</p>	<p>The Claimant agrees to produce documents falling under sub-categories (1) and (2) to the extent they exist and are in the Claimant's possession, custody, or control.</p> <p>Documents requested under (3) and (4) do not exist and the Claimant has never alleged the contrary.</p> <p>Documents requested under (5) have already been provided to the Respondent with the Claimant's production of documents pursuant to Procedural Order No.5 dated 11 March 2016. There are no further documents in the Claimant's possession, custody or control under this sub-category.</p>	<p>Respondent notes that Claimant is willing to provide all documents in the possession, custody or control of Claimant, its branch offices and/or Brailcom relating to points (1) and (2) of its request.</p> <p>Respondent notes that Claimant has no documentary evidence for Claimant's alleged transfer of brand and its alleged business agreement with Brailcom. Respondent records that there is no further record whatsoever of any transfer to or from the UK.</p> <p>Respondent notes that its claim that Claimant did not have any business of its own is – contrary to</p>	<p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-requests (1) and (2).</p> <p>The Tribunal also notes the Claimant's representation that the documents requested under sub-requests (3) and (4) do not exist and that the documents requested under sub-request (5) have already been provided to the Respondent.</p>

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		to or from the United Kingdom between 2 August 2012 (<i>i.e.</i> A11Y's incorporation in the UK) and 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was " <i>effectively eliminated</i> ").		<p>therefore serve to establish that Claimant did not make an investment in the Czech Republic.</p> <p>Under section 476(2) Czech Commercial Code (in the version in force at the time of the alleged transfer of business) the transfer of business required a written agreement. Hence, if such transfer ever took place, at least this written agreement has to exist.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard</p>	<p>The Claimant notes that the Respondent alleges for the first time that "<i>the Claimant did not have any business of its own before the Request for Arbitration was filed.</i>"</p> <p>The Respondent's new allegation is wrong. C-0042 to C-0052 and C-0060 are 12 documents on record which prove that the Claimant had assets and a "<i>business of its own before the Request of Arbitration was filed.</i>" C-0042, for example is a document which shows an overview of property owned by the Claimant all of which pre-date the Request for Arbitration (<i>i.e.</i> 10 October 2014); C-0047 is an employment contract for</p>	<p>Claimant's allegation – not new. For example, in its SoD para 73 Respondent claimed: "[...] Claimant is nothing but an empty shell [...]" . In para 114 of the SoD it claimed: "<i>Claimant is a shell corporation with no business activities in the United Kingdom whatsoever</i>".</p>	

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				<p>Claimant's own business and the alleged transfer of Brailcom's business to Claimant, they must be in Claimant's possession.</p>	<p>the Claimant with Karel Giebisch dated 1 September 2013, employing Mr Giebisch as a trainer for user support for sales and C-0050 is a document showing excerpts from instructions for using Apple computers for the blind, published by the Claimant on 20 March 2014.</p> <p>Furthermore, the Respondent conflates the transfer of "business" and transfer of "enterprise" under Czech law. While a transfer of "enterprise" has a formality regarding being in writing, a transfer of "business" does not require the same.¹</p>	<p>In paras 22 <i>et seq</i> Claimant alleges that it took over all of Brailcom's business, <i>i.e.</i> its "business activities, client base, know-how and its expert personnel". Under section 476(2) Czech Commercial Code (in the version in force at the time of the alleged transfer) such a transfer</p>	

¹ Claimant's Response to Request for Bifurcation, ¶¶ 11 -12.

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						required a written agreement. The distinction between a “ <i>transfer of business</i> ” and a “ <i>transfer of enterprise</i> ” that Claimant tries to draw is unavailing and of no relevance under Czech law. Hence, if such a transfer ever took place, a written agreement has to exist.	
2.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to</p> <p>(1) the purchase and sale of goods and/or services by Brailcom in the Czech Republic, in the United Kingdom or in any other County between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request;</p>	<p>SoD, chapter 2.2: paras 33ss, 43, 50ss and 59ss; para 66.</p> <p>Amended Memorial section H.</p>	<p>Brailcom allegedly transferred all its business to Claimant, however, did not cease to exist. Moreover, Brailcom and Claimant also share the same ultimate owner, namely Mr. Buchal.</p> <p>Respondent alleges that Brailcom’s business was not transferred to Claimant.</p>	<p>The Claimant objects to this production request as it is not “<i>of sufficient relevance to the case or material to its outcome</i>” and is thereby excluded by Article 9 (2) (a) of the IBA Rules on the Taking of Evidence in International Arbitration (2010) (the “IBA Rules”).</p> <p>In particular, the continued activities of Brailcom after 31</p>	<p>Contrary to Claimant’s allegation, the documents requested by Respondent are highly relevant for the present case. These documents will evidence that Brailcom’s business was never transferred to Claimant.</p> <p>If Brailcom was able to continue with its business related to the sale of assistive technology solutions after Claimant (that allegedly had taken</p>	<p>The request is denied on grounds of insufficient materiality.</p>

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		<p>(2) the employment of any person working for Brailcom between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request;</p> <p>(3) all tax declarations made by Brailcom between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request.</p>		<p>Hence, documents evidencing that Brailcom conducted business after Claimant was allegedly “<i>effectively eliminated</i>” will show that no transfer of business took place.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant’s and Brailcom’s business, they must be in Claimant’s possession or at least easily accessible as Mr. Buchal is the owner and CEO of both Claimant and Brailcom.</p>	<p>December 2014 are not in issue in this dispute and are irrelevant to the Claimant's cases. The Respondent mischaracterises the Claimant's position. The Claimant never argued that Brailcom ceased to exist and/or that it stopped its operations after the Claimant was incorporated or after Brailcom transferred its business related to the sale of assistive technology solutions to the Claimant.</p> <p>Furthermore, the Respondent's request pertains to Brailcom, which is a registered public benefit company and a third party to this arbitration. As such, it is misconceived for the Respondent to request</p>	<p>over this business) was allegedly “<i>effectively eliminated</i>” this would be a strong evidence that the business always remained solely with Brailcom and no transfer of business took place.</p> <p>As Mr. Buchal is the owner and CEO of both Claimant and Brailcom, Brailcom cannot be considered as being a true and independent third party.</p>	

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					<p>Brailcom's documents, which cannot be ordered in this arbitration to which Brailcom is not a party.</p> <p>The Claimant also notes that documents requested under sub-category (3) must be in the Respondent's possession, custody and control as Brailcom's tax declarations would have been submitted to the Respondent. The Respondent's statement that these documents are not in its possession, custody or control is therefore not accurate and as such, documents requested under sub-category (3) do not meet the criteria set out in Article 3 (3)(c) of the IBA Rules.</p>	<p>Based on Art 52 of the Act No. 208/2009 Coll., Tax Code ('<i>Tax Code</i>'), information collected by tax organs is confidential.</p> <p>The Tax Code only provides certain strict exceptions under which this general rule of confidentiality does not apply (<i>E.g.</i> criminal proceedings, specific tax related proceedings or in proceedings before the Supreme Audit Office).</p> <p>None of these exceptions applies to our case. Hence, Respondent is not in a position to review Claimant's tax</p>	

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						<p>declarations and is, therefore, not in possession, custody or control of the documents in the meaning of Article 3(3)(c) of the IBA Rules.</p> <p>Therefore, Respondent upholds its request and asks the Tribunal to either order Claimant to provide the requested documents or to order Claimant to issue a waiver of confidentiality as provided in Art. 52 sec. 2 of the Tax Code.</p>	
3.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to</p> <p>(1) the purchase and sale of goods and / or services by Claimant and / or its Czech branch office in the United Kingdom, in the Czech Republic or in</p>	<p>SoD, chapter 5.3, 5.4, 5.5 and 6.</p> <p>Amended Memorial section H.</p>	<p>These documents will show that Claimant was not “<i>effectively eliminated</i>” and “<i>virtually non-existent</i>” by the end of 2014 as a result of Respondent’s alleged actions, but that Claimant was and is</p>	<p>The Claimant agrees, subject to its comments below, to produce documents requested under this category to the extent they exist and are in the Claimant's possession, custody, or control.</p>	<p>Respondent notes that Claimant, in principle, is willing to provide the documents requested.</p> <p>In the following, Respondent will rebut Claimant’s respective reservations:</p>	<p>Sub-request (1), as amended by the Respondent, is granted.</p> <p>Sub-request (2), as amended by the Claimant (namely that this category should be narrowed to</p>

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		<p>any other county between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request;</p> <p>(2) the employment of any person working for Claimant and / or its Czech branch office between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request;</p> <p>(3) invoices for services performed by Claimant and / or its Czech branch office and corresponding contractual agreements between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”)</p>		<p>still in business. Hence, Claimant’s allegations that it was expropriated are baseless.</p> <p>Claimant alleged the breach of Article 5(1) of the BIT for the first time in its Amended Memorial of 11 January 2016, hence, after Respondent filed its Statement of Defence. Therefore, Respondent has not yet been given the chance to explicitly contest this allegation. However, Respondent argues that Czech law was applied flawlessly and that Claimant’s calculation of its loss is grossly inaccurate. Hence, Respondent</p>	<p>First, the Claimant notes that some of the documents requested under this category have already been provided to the Respondent with the Claimant's production of documents pursuant to Procedural Order No.5 dated 11 March 2016. Thus, the Claimant will only produce the documents that have not been produced before as the former are already in the Respondent's possession, custody or control and do not comply with Article 3 (3)(c) of the IBA Rules.</p> <p>Second, this request seeks documents covering a period of almost four years, and covering documents relating to the minutiae of a business’</p>	<p>In respect of point (1) of Respondents request, Respondent notes that it is seeking documents between 31.12.2014 and the date of this request. This is a period of round 2 years and 3 months and not of “<i>almost four years</i>” as Claimant miscalculated.</p> <p>In order to prove that Claimant was not “effectively eliminated” Respondent needs all documents since that effective termination to track Claimant’s development of business since then until now.</p> <p>Hence, Respondent’s request is not overly broad in this respect.</p> <p>Claimant at least implicitly suggests that it</p>	<p>employment contracts), is granted.</p> <p>Sub-request (3) is granted.</p> <p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-request (4).</p>

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		<p>and the date of this request;</p> <p>(4) all tax declarations made by Claimant and / or its Czech branch office between 31.12.2014 (<i>i.e.</i> point in time Claimant alleged its business was “<i>effectively eliminated</i>”) and the date of this request.</p>		<p>will also show that no expropriation took place for these (and several other) reasons.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own business, they must be in Claimant's possession.</p>	<p>operations. It is plainly not reasonable to ask a business to produce evidence relating to every purchase or sale of goods and/or services over such a long period. Indeed, the request is so broadly drafted that it would apparently cover even the purchase of incidentals, such as basic business goods, services of an everyday variety, and purchases of negligible value. If such documents remain in the possession, custody or control of the Claimant – and it would be entirely normal for the purchase of receipts of basic business goods and services not to be retained for such a long period of time – it would be onerous for the Claimant to have to</p>	<p>is burdensome for it to produce its multitude of business operations since 31.12.2014. Respondent notes that this already sheds a light on the substance of Claimant's claim that it was “<i>effectively eliminated</i>”. It is Respondent's understanding that Claimant virtually would not have had any business operations since 31.12.2014, if it really was “<i>effectively eliminated</i>”.</p> <p>In any case, Respondent clarifies that in point (1) of its request it is only requesting documents related to Claimant's core business. Respondent is not requesting documents relating to irrelevant “<i>de minimis purchase and sale of goods</i>”</p>	

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					<p>collate and produce them.</p> <p>Documents relating to <i>de minimis</i> purchase and sale of goods and / or services by Claimant and / or its Czech branch office should be excluded from production under Articles 3 (3)(a) and (b) and 9 (2)(c) and (g) of the IBA Rules. This is because the Respondent has failed to delineate a "<i>narrow and specific requested category of documents</i>" and it would be disproportionate and onerous for the Claimant to have to search for these documents.</p> <p>The same ground of disproportionality applies to documents requested under sub-</p>	<p>In respect of point (2) of its request, Respondent notes that it is seeking documents between 31.12.2014 and the date of this request. This is a period of round 2 years and 3 months and not of "almost four years" as Claimant miscalculated.</p> <p>In order to prove that Claimant was not "<i>effectively eliminated</i>" Respondent needs all documents relating to point (2) since that alleged effective termination to track Claimant's development of business since then until now.</p> <p>Hence, Respondent's request is also not overly broad in this respect.</p>	

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					<p>category (2). It is plainly not reasonable to ask a business to produce evidence relating to every aspect of employment covering a period of almost four years. This would include all payslips, accounting documents and even communications between employees and the Claimant. This sub-category should be narrowed to employment contracts only under Articles 3 (3)(a) and 9 (2)(c) and (g) of the IBA Rules.</p> <p>Furthermore, documents that would apparently fall under sub-category (1) but that do not relate to assistive technologies or sale of solutions are irrelevant to the case</p>	<p>Respondent further notes that it is not true that documents that do not relate to assistive technologies or sale of solutions are irrelevant to the case and immaterial to its outcome. Claimant alleged that it and its business were “<i>effectively eliminated</i>” and not that it merely changed its business model. Hence, it is material for the case to figure out whether Claimant still conducted any business after 31.12.2014 or not.</p> <p>If Claimant has any confidentiality issues with privileged documents it is free to sanitize classified information.</p> <p>In regard to the requested tax declarations of Claimant’s Czech branch</p>	

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					<p>and immaterial to its outcome. These documents include contracts concluded for unrelated services with unrelated third parties to this arbitration. Documents unrelated to assistive technologies or sale of solutions are not compliant with Article 3 (3)(b) of the IBA Rules should also be excluded from production under Article 9 (2)(a). This category also includes privileged documents, such as the Claimant's engagement letter with Withers, which the Claimant is also not required to produce as it is legally privileged and falls within Article 9 (2)(b) of the IBA Rules.</p> <p>The Claimant agrees to produce documents</p>	<p>office that were submitted in the Czech Republic, Respondent notes that based on Art 52 of the Act No. 208/2009 Coll., Tax Code ('Tax Code'), information collected by tax organs is confidential.</p> <p>The Tax Code only provides certain strict exceptions under which this general rule of confidentiality does not apply (<i>E.g.</i> criminal proceedings, specific tax related proceedings or in proceedings before the Supreme Audit Office).</p> <p>None of these exceptions applies to our case. Hence, Respondent is not in a position to review Claimant's tax declarations and is, therefore, not in possession, custody or</p>	

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					<p>under sub-category (4) to the extent they were not submitted before, that they exist and are in the Claimant's possession, custody, or control; although the Respondent must already have custody, possession and control of tax declarations submitted in the Czech Republic.</p> <p>Finally, the Claimant disputes the Respondent's characterisation and wording that "<i>the Claimant was eliminated</i>" and the Respondent's allegation that an expropriation did not take place. The Respondent's actions resulted in the substantial deprivation of the value of the</p>	<p>control of the documents in the meaning of Article 3(3)(c) of the IBA Rules.</p> <p>Therefore, Respondent upholds its request and asks the Tribunal to either order Claimant to provide the requested documents or to order Claimant to issue a waiver of confidentiality as provided in Art. 52 sec. 2 of the Tax Code.</p> <p>Claimant's final statement is, to put it in one word, false. Claimant claimed in para 145L of its Amended Memorial: "[...] <i>to the extent that AIYY was "eliminated" from the market.</i>" Claimant further alleged in para 145M of its Amended Memorial "<i>AIYY's Solutions business was "effectively eliminated" as a result of</i></p>	

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					Claimant's investment in the Czech Republic. The Claimant has never alleged – contrary to the Respondent's statement – that the Claimant was itself eliminated.	<i>the Czech Republic's actions."</i>	
4.	Respondent	Any documents from software companies with regard to Claimant's " <i>alerts about problems</i> " of new software and/or any documents showing any form of compliance with regard to an alert of Claimant or the removal of a problem.	SoD, paras 50ss and 59ss; chapter 4.6 and chapter 5.4. Amended Memorial para 29, FN 33.	Claimant alleges that it alerted software producers about possible flaws and that this justifies its profit margins. Respondent disputes this. The requested documents will show that Claimant's alleged efforts cannot justify the profit margins it charges. Further, the documents will show that Claimant is not in the possession of any specific know-	The Claimant agrees to provide the documents requested under this category to the extent they exist and are in the Claimant's possession, custody, or control. However, communications from Apple were notified to be subject to a Non-Disclosure Agreement which prevents the Claimant from disclosing documents except in specified circumstances such as the Claimant being subject to a valid and legally binding order.	Respondent notes that Claimant is willing to provide the documents requested. Respondent respectfully asks the Arbitral Tribunal to issue a valid and legally binding order in order to enable Claimant to comply with its assurance to provide its communications with Apple.	The Tribunal notes that the Claimant agrees to produce documents responsive to the request. In view of the Non-Disclosure Agreement with Apple, the Tribunal grants the Respondent's request subject to the execution by the Respondent of a confidentiality undertaking in

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				<p>how that would not be shared by all other players in the industry.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own business, they must be in Claimant's possession.</p>	<p>The Respondent mischaracterises the Claimant's case in its comments. The Claimant's profit margins are the result of a combination of know-how, services, selection of appropriate products and their configuration, as well as communications with software producers for the improvement of assistive technologies.</p> <p>Furthermore, the Respondent's understanding of "<i>alerts about problems</i>" is also wrong. The Respondent is requesting "<i>documents from software companies [...] showing compliance with regard to an alert</i>". However, a typical</p>		<p>respect of the "communication from Apple" (see para. 5 of Procedural Order No. 8).</p> <p>This shall constitute a valid and legally binding order.</p>

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					procedure would involve communications sent by the Claimant to the software companies and the Claimant re-testing updated versions of the same software to see whether a bug was fixed.		
5.	Respondent	All documents in the possession, custody or control of Claimant relating to the assessment of the specific needs of (1) Mr. [...] (2) Mr.[...] (3) Ms. [...] (4) Ms. [...]	SoD, chapters 4.6.1, 4.6.2, 4.6.3, 4.7.1, 4.7.2, 4.7.3, 4.7.4, 4.7.5, 4.7.6, 4.7.7. Amended Memorial, paras 30, 31.	Claimant alleges to have sold tailor-made products for its clients. These documents will show that Claimant's alleged services for the visually handicapped	The Claimant accepts to produce the documents requested under this category to the extent they exist and are in the Claimant's possession, custody, or control; except for those that are already submitted to the Respondent with the	Respondent notes that Claimant is willing to provide the documents requested.	The Tribunal notes that the Claimant agrees to produce documents responsive to the request.

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		<p>(5) Mr. [...] (6) Mr. [...] (7) Mr. [...] (8) Mr. [...] (9) Mr. [...]</p> <p>before filing an application for the granting of an allowance for the products offered by Claimant with the Czech authorities.</p>		<p>and blind does not justify the margin it charges for its products.</p> <p>Further, these documents will show that Claimant had not specific know-how that was not shared by all other participants in the industry. Hence, the documents will show that Claimant's argument that it was expropriated because of the disclosure of its know-how is baseless.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own</p>	<p>filing of an aid application.</p> <p>The Claimant repeats its position mentioned above in that its profit margin is the result of a holistic process which is a combination, amongst other things, of know-how, client services, selection of appropriate products and their configuration as well as time and money invested in various aspects of the business over the years. These, altogether, constitute the Claimant's specific know-how.</p>		

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				business, they must be in Claimant's possession.			
6.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to</p> <p>(1) the preparation of the Aid Specification for [...] (Exhibit C-0006);</p>	<p>SoD, paras 50ss and 59ss; chapter 4.6: paras 234ss and 254; and chapter 5.4.</p> <p>Exhibit C-0006.</p>	<p>These documents will show that none of Claimant's alleged services rendered to its customers would justify the margin and/or the price it charged on the products provided to applicants.</p>	<p>The Claimant accepts to produce the documents requested under this category to the extent they exist and are in the Claimant's possession, custody, or control. Documents requested under sub-categories (2) and (3) do not exist as Ms [...] did not get</p>	<p>Respondent notes that Claimant is willing to provide the documents requested in points (1) and (4) – (7) of Respondent's request.</p> <p>Respondent further notes that Claimant, in principle, also conceded to provide the documents</p>	<p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-requests (1), and (4) – (7).</p> <p>Sub-requests (2) and (3), as</p>

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No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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		<p>(2) the basic trainings (<i>i.e.</i> trainings No. 1 – 4) of [...] (as mentioned in Exhibit C-0006) including but not limited to documentation of the basic user training (<i>e.g.</i> type of exercises, details on the information provided, training materials etc.), the configuration and tuning of the individual components of the aid and the time spent for each step of the training and the tuning.</p> <p>(3) the 1 year user support offered to [...] (as mentioned in Exhibit C-0006) including but not limited to documentation of any services actually provided under this support agreement, the specific subject of the</p>	Exhibit C-0007.	<p>Further, these documents will show that Claimant is not in the possession of any specific know-how, but that all Claimant has is general industry knowledge.</p> <p>Hence, the documents will show that Claimant's argument that it was expropriated because of the disclosure of its know-how is baseless.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own business, they must</p>	<p>the trainings due to an adverse decision of the Labour Office under which she was refused the price of the aid.</p> <p>As above, the Claimant disputes the Respondent's allegations that the Claimant did not have any specific know-how and/or that its margins were not justified.</p>	<p>requested in points (2) and (3) of Respondent's request.</p> <p>Respondent clarifies in this respect that it requests detailed information about Claimant's standardized basic trainings (<i>i.e.</i> trainings No. 1 – 4) and its 1 year user support in general. Even if [...] decided not to engage in those trainings and not to use the support, because her respective allowance was not granted, these services were offered to her and hence, there has to be any detailed documentation of these services.</p>	amended by the Respondent, are granted.

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		<p>support (Hardware, Software or Configuration), the modalities of the support (electronic support, support via phone or on-site support);</p> <p>(4) the 90 days initial user support offered to [...] (as mentioned in Exhibit C-0006) and [...] (as mentioned in Exhibit C-0007), including but not limited to documentation of any services actually provided under this support agreement, of the specific subject of the support (Hardware, Software or Configuration) and the modalities of the support (electronic support, support via phone or on-site support);</p>		<p>be in Claimant's possession.</p>			

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		<p>(5) the actual handing over procedure of the aid to [...] (as mentioned in Exhibit C-0006) and [...] (as mentioned in Exhibit C-0007), including but not limited to the putting into operation of the aid, the setup testing, the internet setup, the interconnection of aid components, the instruction given, the safety precautions and the demonstration of how the aid works;</p> <p>(6) the Electronic Handbook “<i>Apple Computers for the blind</i>” (as mentioned in Exhibit C-0006);</p> <p>(7) the Electronic Handbook “<i>iPhone for the blind</i>” (as mentioned in Exhibit C-0007);</p>					

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7.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to the alleged know-how created by Brailcom, and incorporated into the special aids sold by Claimant, including but not limited to</p> <p>(1) patents on products / software registered by Claimant or Brailcom;</p> <p>(2) trademarks registered by Claimant or Brailcom; and</p> <p>(3) any valuation / appraisal report prepared in order to assess the value of Claimant's know-how or other intellectual assets.</p>	<p>SoD paras 50ss; 59ss; chapter 4.6; and chapter 5.4.</p> <p>Claimant's expert report, paragraphs 1.5. and 4.2.</p>	<p>Claimant alleges that it took over know-how generated by Brailcom before it filed its Request for Arbitration.</p> <p>Respondent disputes this and maintains that all products developed by Brailcom are available to everyone at no cost under free licence and have not seen any evidence of patents registered by Claimant or Brailcom.</p> <p>These documents will show whether Claimant possessed any know-how that Respondent allegedly disclosed to Claimant's competition.</p>	<p>The Claimant has never alleged that it had registered patents or trademarks. Registered patents and trademarks are not at issue in these proceedings. Documents requested under sub-categories (1) and (2) are therefore not "<i>relevant to the case or material to its outcome</i>" and should be excluded from production under Articles 3 (3)(b) and 9 (2)(a) of the IBA Rules. In any case, they do not exist.</p> <p>The overarching request under this category (i.e. "<i>All documents in the possession, custody or control of Claimant relating to the alleged know-how created by Brailcom, and incorporated into the</i></p>	<p>Respondent notes that Claimant is willing to provide the documents requested in point (3) of Respondent's request.</p> <p>Respondent further notes that Claimant acknowledged that it and/or Brailcom neither has any patents on products / software registered, nor any trademarks registered.</p>	<p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-request (3).</p> <p>Otherwise the request is denied on grounds of insufficient materiality.</p>

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No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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				<p>The requested documents are not in possession, custody or control of Respondent. As the documents regard the know-how allegedly possessed by Claimant, they must be in Claimant's possession.</p>	<p><i>special aids sold by Claimant</i>") is too broad and vague. This request does not comply with Article 3 (3)(a) of the IBA Rules as a sufficiently "<i>narrow and specific requested category of Documents</i>"</p> <p>The Respondent embarks on a "<i>fishing expedition</i>" where it requests all documents relating to Brailcom's know-how incorporated into the Claimant's special aids. This request would capture nearly every single document the Claimant possesses which were produced over many years. This request should be limited to its sub-categories only.</p>		

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					The Claimant agrees to provide documents which fall under sub-category number (3) to the extent they exist and are in the Claimant's possession, custody, or control and the Claimant already provided its Expert Report on the Assessment of Damage dated 30 May 2015.		
8.	Respondent	Any documents including a price quote and / or the price actually paid by Claimant for the use of a Czech voice on the iPhones sold by Claimant	SoD, paras 50ss and 59ss; chapter 4.6: paras 204ss and 242ss; and chapter 5.4. Amended Memorial, paras 29ss. Exhibit C-0007.	The evidence presented by Claimant indicates that the use of the Czech language as output language of the iPhones is a specific feature of the iPhones it sold (see Exhibit C-0007). The requested documents will show that the configuration of the iPhones it sold contained no	There are no documents in the Claimant's possession, custody, or control relating to the prices quoted or paid specifically for "the use of a Czech voice on the iPhones sold by Claimant." The Respondent has misrepresented the position and/or misunderstood the documentation on record. Contrary to the	-	The request is moot in view of the Claimant's representation that "[t]here are no documents in the Claimant's possession, custody, or control relating to the prices quoted or paid specifically for 'the use of a Czech voice on

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No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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				<p>additional know-how of Claimant.</p> <p>Further, the documents will show that Claimant's profit margin on the iPhones it sold is not justified by the use of additional synthetic Czech voices used on the iPhones specifically for blind and visually disabled persons.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard the Claimant's business, they must be in Claimant's possession.</p>	<p>Respondent's allegation, the Claimant did not claim a profit margin for installing "<i>additional synthetic Czech voices</i>," nor did the Claimant suggest that it had created such "<i>synthetic Czech voices</i>." Rather, in C-007 the Claimant explained that it configured an assistive technology solution that had a "<i>System and screen reader localized to Czech language</i>."</p> <p>Second, the Respondent is requesting documents that would not be relevant and material in the way it claims. Even if the requested documents existed, they would not resolve the question of whether "<i>the configuration</i>" of the iPhones supplied by the</p>		<p><i>the iPhones sold by Claimant.'</i>"</p>

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					<p>Claimant contained <i>"no additional know-how."</i> The Claimant did configure the iPhones it supplied. This included ensuring that there was Czech language output but the Claimant's configuration went far beyond this.</p> <p>Third, the Respondent is basing its request on a misrepresentation of the Claimant's profit margins. As demonstrated on page 1 of C-007, the Claimant did not assign a particular <i>"profit margin"</i> to Czech language output and the Respondent has not been able to point to any instance where the Claimant has done so. The Claimant sold iPhones as components</p>		

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					of overall assistive technology solutions. Prices listed in applications were not prices for products sold on their own, but allocations of costs for the price of the complete assistive technology solution along with the necessary training and configuration. The Claimant has always maintained that the price of an assistive technology solution cannot simply be reduced to the sum of prices for individual components. ²		
9.	Respondent	Documents showing which Braille notation support was installed on the iPhones it offered to (i) Mr. [...] (ii) Mr. [...]	SoD, paras 50ss and 59ss; chapter 4.6: paras 204ss; and chapter 5.4.	The documents submitted by Claimant (Exhibit C-0007) indicate that the iPhones sold by Claimant offered	There are no documents in the Claimant's possession, custody, or control relating to the Claimant's installation of Braille notation on		The request is moot in view of the Claimant's representation that: "[t]here are no

² See: Claimant's Amended Memorial, ¶¶ 29; 75(i); 122

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		(iii) Mr. [...] (iv) Mr. [...]	Amended Memorial, paras 29ss. Exhibit C-0007.	<p>output to a Braille display. The documents requested will show that Claimant did not install any additional Braille notations other than those pre-installed on the iPhone.</p> <p>Hence, the requested documents will show that the configuration of the iPhones sold by Claimant did not include any know-how of Claimant.</p> <p>Further, the requested document will show that Claimant's profit margin on the iPhones it sold is not justified by the installation of specific Braille</p>	<p>iPhones since the Claimant did not install Braille notation on iPhones, nor did it claim to do so.</p> <p>The Respondent has mischaracterised the position and is requesting documents to deny an allegation that has never been made by the Claimant. C-007, referred to by the Respondent, identifies Braille display as a configured output for the screen reader. It does not contain any assertion that the Claimant installed additional Braille notations.</p> <p>Documents relating to the installation of Braille notation — even if they existed — would not show whether the</p>		<i>documents in the Claimant's possession, custody, or control relating to the Claimant's installation of Braille notation on iPhones since the Claimant did not install Braille notation on iPhones, nor did it claim to do so."</i>

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				<p>notations not pre-installed on the iPhone.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard the Claimant's business, they must be in Claimant's possession.</p>	<p>Claimant's profit margins were "justified." As demonstrated on page 1 of C-007, the Claimant did not assign a particular "profit margin" to Braille notation and, once again, the Respondent has not been able to point to any instance where the Claimant has done so. The Claimant sold iPhones as components of overall assistive technology solutions. Prices listed in applications were not prices for products sold on their own, but allocations of costs for the price of the complete assistive technology solution along with the necessary training and configuration. The Claimant has always</p>		

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					maintained that the price of an assistive technology solution cannot simply be reduced to the sum of prices for individual components. ³		
10.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to</p> <p>(i) The specific configuration settings of the iPhones it offered to</p> <ul style="list-style-type: none"> • Mr. [...] • Mr. [...] • Mr. [...] • Mr. [...] • The specific configuration performed by Claimant of the Navigon app on the iPhones offered to 	<p>SoD, paras 50ss and 59ss; chapter 4.6: paras 204ss; and chapter 5.4.</p> <p>Amended Memorial, paras 29ss.</p> <p>Exhibit C-0007.</p>	<p>Claimant alleges to have performed an individual set up of the iPhones offered and the Navigon Europe App (offered explicitly to Ms [...]). The requested documents will show that the configuration of the iPhones it sold contained no additional know-how of Claimant.</p> <p>The documents will further show that</p>	<p>The Claimant can provide lists of components that these iPhones were combined with to create tailored assistive technology solutions for each of these customers, except those already submitted to the Respondent. Those documents already submitted to the Respondent fall with the Respondent's possession, custody, or control and are, thus, not within Article 3(3)(c) of the IBA Rules.</p>	<p>Respondent notes that Claimant is willing to provide the “<i>lists of components that iPhones were combined with to create tailored assistive technology solutions for each of [Claimant’s] customers</i>”.</p> <p>Further, Claimant is willing to provide “<i>descriptions</i>” of the precise calibrations and configurations it used and Respondent requests their production.</p>	<p>The request is granted. The Claimant is ordered to produce the documents it has offered to provide.</p>

• Mr. [...]

³ See: Claimant's Amended Memorial, ¶¶ 29; 75(i); 122

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		<ul style="list-style-type: none"> • Mr. [...] • Mr. [...] • Mr. [...] 		<p>Claimant's profit margin on the iPhones it sold is not justified by its configuration services.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard the Claimant's business, they must be in Claimant's possession.</p>	<p>The precise calibrations and configurations were performed on an individualised basis using the know-how and expertise of the Claimant's staff and do not exist in hard copy form, although the Claimant can provide descriptions of the configurations used.</p> <p>The Claimant performed an individual set-up of its assistive technology solutions for its customers and this was an aspect of the additional know-how utilised by the Claimant, through the expertise of the Claimant's staff. The configuration was fine-tuned individually during the personal handover and the</p>		

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					<p>subsequent training sessions with the customer, as explained in witness statements.⁴</p> <p>The Claimant's aggregate know-how also encompassed other elements such as the detailed individualised assessment of customers,⁵ its detailed training,⁶ and its selection of aids which was not based on a fixed price list with pre-fabricated solutions.⁷</p> <p>The Claimant has always maintained that the price of an assistive technology solution cannot simply be reduced to the sum of</p>		

⁴ See, e.g.: Witness Statement of Hynek Hanke, ¶¶ 32 – 41; Witness Statement of [...], ¶¶ 11 – 14; 20. ⁵ See, e.g.: Response to Request for Bifurcation, ¶ 20; Witness Statement of Hynek Hanke, ¶¶ 38 - 42

⁶ See, e.g.: Response to Request for Bifurcation, ¶ 21; Witness Statement of Hynek Hanke, ¶¶ 34 – 37.

⁷ See, e.g.: Witness Statement of Hynek Hanke, ¶¶ 23 – 30.

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					prices for individual components. ⁸ The Claimant has consistently objected to the Respondent's approach of trying to compare the cost of the Claimant's assistive technology solutions with the cost of specific components sourced without consideration of the way in which components work together and are integrated into the overall assistive technology solution.		
11.	Respondent	All documents in the possession, custody or control of Claimant relating to the applications for special aids made by Claimant's customers, which were not granted or only partially granted by the Respondent	SoD, chapter 6. Claimant's expert report, section 6.A Memorial, exhibit	These documents will allow Respondent's expert to re-perform the calculation and assess reasonableness of assumptions used for	The Claimant objects to the production of the documents in sub-categories (1) and (2) as these documents must be in the Respondent's possession, custody, or control. This	The Respondent rejects the Claimant's objections. As a preliminary matter, the Respondent notes that the Claimant does not deny that these documents exist or that they are in	Sub-requests (1) and (2) are denied on the basis that any relevant documentation relating to the specifics of the

⁸ See: Claimant's Amended Memorial, ¶¶ 29; 75(i); 122

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		<p>(either due to allegedly not reimbursing Claimant's customers for Claimant's full margin or due to modification of the application by the Respondent), and which were included in the Claimant's experts' calculation of actual losses, including but not limited to</p> <p>(1) application documentation (order documentation as referenced by Claimant in Exhibit C-12 to Memorial) with details specifying the type and components of special aid and corresponding price;</p> <p>(2) sales invoices related to special aids for each application;</p>	C-12	<p>actual losses' calculation as presented by Claimant's experts.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own business, they must be in Claimant's possession.</p>	<p>"<i>application documentation</i>" and those related sales invoices would consist of applications and invoices submitted to the Respondent.</p> <p>As the Respondent notes in its request, these were "<i>not granted or only partially granted by the Respondent</i>" and so they were clearly reviewed by the Respondent. The Claimant has already provided a list of such applications in C-0012 (as the Respondent has acknowledged), and so the Respondent should be able to identify these documents from within those in its possession.</p> <p>Indeed, the Respondent was able to provide relevant documents</p>	<p>Claimant's custody, possession or control.</p> <p>Addressing Claimant's objections, in turn.</p> <p>First, the objection on grounds of Respondent already having possession of the documents: For one, Claimant has failed to show why it would be impractical to produce documents that Claimant has already collected in the course of its ordinary business and can provide without effort. It would be virtually impossible and unreasonably costly for the Respondent to try to produce all these documents. These records are archived historical excerpts collected over the years of providing</p>	<p>calculations carried out by the Claimant's expert will be disclosed pursuant to Document Request (12).</p> <p>Sub-request (3), as amended by the Respondent, is granted.</p>

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		(3) bank statements supporting payments actually received by Claimant from its customers under each application.			<p>from this category with its Counter-Memorial Statement of Defence. By way of example:</p> <ul style="list-style-type: none"> • Ms Smolenska's application of 15 November 2012 is listed in C-0012 and the Respondent produced the invoice for this application (R-006); • Mr [...] application of 20 May 2013 is listed in C-0012 and the Respondent produced the application and invoice for this application (R-007); <p>The Respondent also claims to have</p>	<p>state aids for visually impaired persons.</p> <p>Claimant is thus suggesting the Respondent should examine the entire archive, much of which is not even digitized, in the hope of finding something that the Claimant already has in its possession.</p> <p>It would be unreasonably burdensome for the Respondent as the requesting party to produce those documents.</p> <p>Second, it is reasonable to assume that Claimant already provided its expert with these documents to allow the expert verification of the validity of the list of applications under C-0012 to the primary</p>	

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					<p><i>"compiled an overview of the applications based on solutions offered by the Claimant, including the solution sought for and the price."</i>⁹ Indeed, the Respondent has submitted a <i>"compilation"</i> of these applications as R-0010, and has made written submissions on the basis of this exhibit,¹⁰ which also contains the <i>"price of aid listed in the application"</i> and the <i>"allowance granted."</i>¹¹ Therefore, it is unclear how the Respondent can credibly claim not to have the documents in sub-categories (1) and (2) in its possession.</p>	<p>documentation in the calculation of actual losses.</p> <p>The Claimant's artificial protestation is thus unwarranted for documents, which Claimant has in its direct possession and, which are indirectly relied upon also by the Claimant's expert.</p> <p>Last, in respect to point (3) of its request, Respondent affirms that it is not seeking documentation relating to payments made by the Respondent but documentation relating to payments actually received by Claimant from its customers.</p>	

⁹ Counter-Memorial (Statement of Defence), ¶ 186.

¹⁰ Counter-Memorial (Statement of Defence), ¶ 186.

¹¹ Compilation of Applications, **R-0010**.

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					<p>Any relevant documentation relating to the specifics of the calculations carried out by the Claimant's expert will, in any event, be disclosed pursuant to Document Request (12).</p> <p>The Claimant objects to the production of the documents in sub-category (3) as the Respondent is seeking documentation relating to payments made by the Respondent. The Respondent therefore already has the salient information.</p>	Hence, the Respondent maintains its request in full.	
12.	Respondent	All documents in the possession, custody or control of Claimant cited by Claimant's experts relating to the financial performance of Claimant or Brailcom in the period 2011 to 2015, including but not limited to	SoD, chapter 6. Claimant's expert report, section 6, appendices D and E	These documents will serve as a support for Respondent's expert to re-perform and verify the lost profits calculations presented by	The Claimant will provide the documents within the specific sub-categories (1) to (6) to the extent that they exist and are in the Claimant's possession, custody, or control. However, the	Respondent notes that Claimant is willing to provide the documents requested in points (1) – (6) of Respondent's request.	The Tribunal notes that the Claimant agrees to produce documents responsive to sub-requests (1) – (6).

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		<p>(1) Claimant's business plan (<i>Claimant's expert report, paragraph 6.10</i>);</p> <p>(2) plan of Claimant's expansion (<i>Claimant's expert report, Appendix D, Note 1</i>);</p> <p>(3) comprehensive cost model (<i>Claimant's expert report, Appendix D, Note 1</i>);</p> <p>(4) Claimant's financial statements (<i>Claimant's expert report, paragraph 6.21</i>);</p> <p>(5) Claimant's cost projections (<i>Claimant's expert report, paragraph 6.23</i>); and</p> <p>(6) Documents showing the share of totally blind and partially blind customers</p>		<p>Claimant's expert and assess the reasonableness of assumptions used.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents relate to the calculation performed by Claimant's side, regard Claimant's own business and are referenced by Claimant's experts, they must be in Claimant's possession.</p>	<p>Claimant does not accept the analysis of the Respondent's expert as currently articulated on the record, which will be addressed in due course.</p> <p>The Claimant objects to the Respondent's overarching request to provide "<i>all documents relating to the financial performance of Claimant or Brailcom in the period 2011 to 2015, including but not limited to</i>" those specific sub-categories. Article 3(a)(ii) of the IBA Rules notes that a Request to Produce shall contain a description of "<i>a narrow and specific requested category of documents.</i>" The Respondent's overly broad request to "<i>any documents... relating to</i></p>		

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		in the total number of customers served by Claimant (<i>Claimant's expert report, Appendix E, Note I.d.</i>).			<p><i>... financial performance,"</i> on the other hand, is sweeping and vague. Such a request is unclear in scope and far from narrow.</p> <p>The production of such a wide category of documents would place an unreasonable burden on the Claimant and would fall within Article 9(2)(c) of the IBA Rules. Minor calculations or periodic and short-term assessments of insignificant financial issues would be caught within the request. Further, the Respondent claims that its overarching requests are also for its expert to "<i>re-perform and verify the lost profits calculations</i></p>		

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					<i>presented by Claimant's expert" and the "assess the reasonableness of assumptions used." The Claimant is willing to provide the financial information directly referenced in the Claimant's expert report and this will be sufficient for the Respondent's stated purpose.</i>		
13.	Respondent	<p>All documents in the possession, custody or control of Claimant relating to financial performance of Claimant or Brailcom in the period 2011 to 2015, including but not limited to</p> <p>(1) management accounts including budgets and forecasts prepared in the general course of Claimant's business;</p> <p>(2) general ledgers;</p>	SoD, chapter 6. Claimant's expert report, section 6	<p>These documents will allow Respondent's expert to assess the financial standing of the Claimant, its ability to expand its business and to achieve the level of lost profits allegedly suffered by Claimant.</p> <p>The requested documents are not in</p>	The Claimant will provide the documents within the specific sub-categories (1), (3), (4), and (5) to the extent that they exist and are in the Claimant's possession, custody, or control. However, the Claimant does not accept the analysis of the Respondent's expert as currently articulated on the record, which will be addressed in due course.	<p>Respondent notes that Claimant is willing to provide the documents requested in points (1) and (3) – (5) of Respondent's request.</p> <p>Respondent further notes that Claimant is willing to provide the Respondent with its and Brailcom's accounts of the period 2011 to 2015.</p>	<p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-requests (1) and (3)– (5).</p> <p>Sub-request (2) is denied.</p>

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		<p>(3) details of short- and long-term interest bearing liabilities and debts;</p> <p>(4) breakdown of company's fixed and operating assets including aging analysis; and</p> <p>(5) any market / industry analyst reports or researches including estimated market size, sales trends and forecasts.</p>		<p>possession, custody or control of Respondent. As the documents regard Claimant's own business, they must be in Claimant's possession.</p>	<p>The Claimant objects to sub-category (2) because a reference to <i>"general ledgers"</i> is not a request for a <i>"narrow and specific"</i> category of documents under Article 3(a)(ii) of the IBA Rules. However, the Claimant is willing to provide the Respondent with its accounts.</p> <p>The Claimant also objects to the Respondent's overarching request to provide <i>"all documents relating to financial performance of Claimant or Brailcom in the period 2011 to 2015, including but not limited to"</i> those specific</p>		

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					<p>categories. Article 3(a)(ii) of the IBA Rules notes that a Request to Produce shall contain a description of "<i>a narrow and specific requested category of documents.</i>" The Respondent's overly broad request to "<i>any documents...relating to financial performance,</i>" on the other hand, is sweeping and vague. Such a request is unclear in scope and far from narrow.</p> <p>The production of such a wide category of documents would place an unreasonable burden on the Claimant and would fall within Article 9(2)(c) of the IBA Rules. Minor calculations or periodic and short-term assessments of</p>		

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					<p>insignificant financial issues could be caught within the request. Further, the Respondent claims that its overarching requests are also for its expert to <i>"assess the financial standing of the Claimant."</i> The Claimant is willing to provide the financial information directly referenced in the Claimant's expert report and this will be sufficient for the Respondent's stated purpose.</p>		
14.	Respondent	All documents in the possession, custody or control of Claimant relating to the average prices of solutions offered by Claimant in the period 2011 to 2015, including but not limited to	SoD, chapter 6. Claimant's expert report, paragraphs 6.15. and 6.16	These documents will allow Respondent's expert to re-perform and assess reasonableness of the calculation of	The Claimant objects to the production of the documents in sub-categories (1) and (2) as these documents must be in the Respondent's possession, custody, or	<p>The Respondent rejects the Claimant's objections.</p> <p>As a preliminary matter, the Respondent notes that the Claimant does not deny that these documents</p>	<p>Sub-requests (1) and (2) are granted.</p> <p>Sub-request (3), as clarified by</p>

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		<p>(1) application documentation for complete cases (order documentation as referenced by Claimant in Exhibit C-11) with details specifying the type and components of special aid and corresponding price;</p> <p>(2) sales invoices related to special aids in complete cases (<i>Memorial, Exhibit C-11 to Memorial</i>); and</p> <p>(3) price lists for all products offered by Claimant including break down by purchase costs, costs of services and Claimant's respective margins.</p>	<p>Memorial, exhibit C-11</p>	<p>average prices for solutions offered by Claimant as presented by Claimant's experts in the calculation of lost profits.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents regard Claimant's own business, they must be in Claimant's possession.</p>	<p>control. This "<i>application documentation</i>" and these "<i>sales invoices</i>" were submitted to the Respondent.</p> <p>The Claimant has already provided a list of such applications in C-0011 (as the Respondent has acknowledged), and so the Respondent should be able to identify the documents from within those in its possession.</p> <p>The Respondent also claims to have "<i>compiled an overview of the applications based on solutions offered by the Claimant, including the solution sought for and the</i></p>	<p>exist or that they are in Claimant's custody, possession or control.</p> <p>Addressing Claimant's objections, in turn.</p> <p>First, the objection to points (1) and (2) on grounds of Respondent already having possession of the documents. For one, Claimant has failed to show why it would be impractical to produce documents that Claimant has already collected in the course of its ordinary business and can provide without effort. It would be virtually impossible and unreasonably costly for the Respondent to try to produce all these documents. These records are archived historical excerpts collected over</p>	<p>the Respondent, is granted.</p>

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					<p><i>price.</i>¹² Indeed, the Respondent alleges that Directorate General and the Ministry of Labour and Social Affairs had a meeting to discuss this compilation.¹³ The Respondent has submitted a "<i>compilation</i>" of these applications as R-0010, and has made written submissions on the basis of this exhibit,¹⁴ which also contains the "<i>price of aid listed in the application</i>" and the "<i>allowance granted.</i>"¹⁵ Therefore, it is unclear how the Respondent can credibly claim not to have the documents in sub-categories (1) and (2) in its possession.</p>	<p>the years of providing state aids for visually impaired persons.</p> <p>Claimant is thus suggesting the Respondent should examine the entire archive, much of which is not even digitized, in the hope of finding something that the Claimant already has in its possession.</p> <p>It would be unreasonably burdensome for the Respondent as the requesting party to produce those documents.</p> <p>The Respondent hence maintains its Request in relation to points (1) and (2).</p>	

¹² Counter-Memorial (Statement of Defence), ¶ 186.

¹³ Counter-Memorial (Statement of Defence), ¶ 187.

¹⁴ Counter-Memorial (Statement of Defence), ¶ 186.

¹⁵ Compilation of Applications, **R-0010**.

1 No.	2 Requesting Party	3 Documents or Category of Documents Requested	4 Relevance and Materiality According to Requesting Party		5 Responses / Objections to Document Request	6 Reply to Objections to Document Request	7 Tribunal's Decisions
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					<p>In relation to sub-category (3), the Claimant has already been clear that it <i>"never had a fixed price list with already-made aids, asking the client to choose one of them"</i> but rather the Claimant was able to <i>"to devise and offer individually-tailored aids that satisfied the needs of every distinct client."</i>¹⁶ Therefore, no such documents exist as they would be assessed on an individual basis depending on the customer's needs. In any event, the Respondent is already in possession of the applications submitted to it for the costs of the</p>	<p>Second, in relation to the objection to point (3) Respondent notes Claimant's representation that no responsive documents exist.</p> <p>However, Respondent maintains that it is not credible that a seller would not have price and cost information for individual components of its products, as these are necessary parts of the final solution price offered by the Claimant. Indeed, the fact that the Claimant was able to include information on representative costs in the aids applications following the Respondent's Instruction dated 12 July 2013 to the</p>	

¹⁶ Witness Statement of Hynek Hanke, ¶ 23.

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					<p>Claimant's assistive technology solutions. Following the Respondent's Instruction dated 12 July 2013 to the Labour Offices,¹⁷ these applications included representative costs of various components and services and, as noted above, the Respondent claims to have already conducted analysis on these.</p> <p>The Claimant objects to the Respondent's overarching request to provide all documents <i>"relating to the average prices of solutions offered by Claimant in the period 2011 to 2015, including but not limited to"</i> the specific sub-</p>	<p>Labour Offices indicates that the documents requested are in Claimant's possession.</p> <p>Respondent highlights that the documents requested under the point (3) relate to price lists for individual components of the solutions offered by Claimant not to price lists for complete solutions.</p> <p>Since the documents requested concern the core issue any company is addressing—namely, products pricing, margin calculation and overall economic performance—it can be assumed that such documents exist.</p> <p>Respondent therefore maintains its request and</p>	

¹⁷ Instruction (12 July 2013), C-0010.

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					<p>categories set out in Request (14).</p> <p>Article 3(a)(ii) of the IBA Rules notes that a Request to Produce shall contain a description of "<i>a narrow and specific requested category of documents.</i>" The Respondent's overly broad request to "<i>any documents... relating to... relating to the average prices of solutions offered by Claimant in the period 2011 to 2015</i>" on the other hand, is sweeping and vague. Such a request is unclear in scope and far from narrow. Production of such a wide category of documents would fall within Article 9(2)(c) of the IBA Rules as it would place an</p>	<p>respectfully requests the Tribunal to order the Claimant to produce documents requested point (3).</p> <p>Respondent clarifies that it is not seeking individual price list that Claimant offered to its customers in the individual case. Respondent request a general price list that lists all products offered by Claimant (including break down by purchase costs, costs of services and Claimant's respective margins). It is highly implausible that Claimant did not keep any track of the products that it regularly offered to its customers and, hence, started completely from the scratch with each new costumer. Hence, the</p>	

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					unreasonable burden on the Claimant.	Tribunal may confidently dismiss Claimant's respective objection.	
15.	Respondent	<p>All underlying calculations in the possession, custody or control of Claimant (and Claimant's expert) relating to financial losses calculated in the Claimant's expert report including but not limited to</p> <p>(1) calculation of actual losses suffered by Claimant (<i>Claimant's expert report, Table 4</i>);</p> <p>(2) projected number of clients served by Claimant in the period 2014 to 2023 (<i>Claimant's expert report, Table 5</i>);</p> <p>(3) projected average revenue per client and total revenues of Claimant in the period 2014 to 2023 (<i>Claimant's expert report, Table 8</i>);</p>	<p>SoD section 6.</p> <p>Claimant's expert report, section 6.</p>	<p>The requested documents are necessary to evaluate the accuracy and reasonableness of Claimant's experts' calculations of the losses and are therefore relevant and material to the outcome of the dispute.</p> <p>The requested documents are not in possession, custody or control of Respondent. As the documents relate to the calculation performed by Claimant's experts, they must be in Claimant's possession.</p>	<p>The Claimant objects to the production of the documents in sub-category (1). The actual losses were calculated as the difference between the total amounts applied for on behalf of the Claimant and the total amounts actually received from the Respondent. The Respondent has all the necessary documents in its possession, custody, or control relating to the amounts applied for and the amounts actually accepted by the Respondent.</p> <p>The Claimant will provide the documents in sub-categories (2) to (9) to the extent they</p>	<p>Respondent notes that Claimant is willing to provide the documents requested in points (2) – (9) of Respondent's request.</p> <p>The Respondent rejects the Claimant's objections in relation to point (1).</p> <p>As a preliminary matter, the Respondent notes that the Claimant does not deny that these documents exist or that they are in Claimant's custody, possession or control.</p> <p>First, Claimant has failed to show why it refuses to produce calculation directly referenced in the Claimant's expert report. The requested calculation</p>	<p>Sub-request (1), as clarified by the Respondent, is granted.</p> <p>The Tribunal notes that the Claimant agrees to produce documents responsive to sub-requests (2) – (9).</p>

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No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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		<p>(4) calculation of gross profit margins generated by Claimant in the period 2012 to 2013 (<i>Claimant's expert report, Table 9</i>);</p> <p>(5) projection of gross profit generated by Claimant in the period 2014 to 2023 (<i>Claimant's expert report, Table 10</i>);</p> <p>(6) projected operating expenditures and EBITDA of Claimant in the period 2014 to 2023 (<i>Claimant's expert report, Table 11</i>);</p> <p>(7) projected CAPEX and depreciation that Claimant would incur in the period 2014 to 2023 (<i>Claimant's expert report, Table 12</i>);</p>			<p>exist and are in the Claimant's possession, custody, or control. However, the Claimant objects to the Respondent's overarching request to provide "<i>All underlying calculations in the possession, custody or control of Claimant (and Claimant's expert) relating to financial losses calculated in the Claimant's expert report including but not limited to</i>" the specific sub-categories requested.</p> <p>Article 3(a)(ii) of the IBA Rules notes that a Request to Produce shall contain a description of "<i>a narrow and specific requested category of documents.</i>" The Respondent's overly broad request to "<i>All</i></p>	<p>lies at the core of the Claimant's assessment of losses and it is fairly reasonable to request it in order to allow Respondent's expert to verify the accuracy and reasonableness of Claimant's experts' calculation.</p> <p>Second, Respondent's request under point (1) is for the calculation itself not for the supporting documentation.</p> <p>The Claimant's artificial protestation is thus unwarranted for calculation prepared by Claimant's expert that Claimant has in its possession and is directly relied upon in the Claimant's expert report.</p>	

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		<p>(8) projected free cash flows generated by Claimant in the period 2014 to 2023 (<i>Claimant's expert report, Table 13</i>); and</p> <p>(9) projected number of Claimant's clients and employees in the period 2013 to 2023 (<i>Claimant's expert report, Appendix D</i>).</p>			<p><i>underlying calculations in the possession, custody or control" of both the Claimant and the Claimant's expert "relating to financial losses calculated in the Claimant's expert report," on the other hand, is sweeping and vague. Such a request is unclear in scope and far from narrow. Production of such a wide category of documents would fall within Article 9(2)(c) of the IBA Rules as it would place an unreasonable burden on the Claimant.</i></p>	<p>The Respondent hence maintains its request.</p>	