

**EN EL MARCO DE UN ARBITRAJE CONFORME AL
TRATADO DE LIBRE COMERCIO DE AMÉRICA DEL NORTE**

- y -

**EL REGLAMENTO DE ARBITRAJE DE LA
COMISIÓN DE LAS NACIONES UNIDAS PARA EL DERECHO MERCANTIL
INTERNACIONAL (1976)**

- entre -

**JOSHUA DEAN NELSON, POR DERECHO PROPIO Y EN REPRESENTACIÓN DE
TELE FÁCIL MÉXICO, S.A. DE C.V., Y JORGE LUIS BLANCO**

(las “Demandantes”)

y

LOS ESTADOS UNIDOS MEXICANOS

(la “Demandada”)

Caso CIADI No. UNCT/17/1

RESOLUCIÓN PROCESAL No. 8

Tribunal

Dr. Eduardo Zuleta (Presidente)
Sr. V.V. Veeder, QC (Árbitro)
Sr. Mariano Gomezperalta Casali (Árbitro)

Secretaria del Tribunal

Sra. Marisa Planells-Valero

9 de agosto de 2018

I. INTRODUCCIÓN

1. El 26 de junio de 2018 la Demandada remitió a las Demandantes su segunda solicitud de documentos.
2. El 10 de julio de 2018 las Demandantes presentaron sus objeciones y respuestas a la segunda solicitud de documentos de la Demandada.
3. El 17 de julio de 2018 la Demandada presentó sus réplicas a las respuestas y objeciones de las Demandantes. La Demandada envió las Réplicas en forma simultánea a las Demandantes y al Tribunal.
4. El Tribunal ha analizado la solicitud de exhibición de documentos de la Demandada, las respuestas y objeciones de los Demandantes y las réplicas de la Demandada, las cuales constan en la Tabla Redfern adjunta a esta Resolución Procesal.

II. CONSIDERACIONES GENERALES PARA DECIDIR SOBRE LAS SOLICITUDES DE EXHIBICIÓN DE DOCUMENTOS OBJETADAS

5. En primer lugar, la Demandada consideró que las respuestas de las Demandantes a las solicitudes Nos. 4, 5, 10, 17, 20, 21, 22 y 23 eran satisfactorias. Por lo tanto, no es necesario que el Tribunal emita una decisión respecto de dichas solicitudes y sólo decidirá respecto de las solicitudes Nos. 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18 y 19 (las “Solicitudes de Documentos Objetadas”).
6. De conformidad con el Artículo 3.7 de las Reglas de la IBA del 2010 sobre Práctica de Prueba en el Arbitraje Internacional (“Reglas de la IBA”), el Tribunal podrá ordenar la exhibición de documentos si determina, *inter alia*, que:
 - (i) los aspectos que desea probar la Parte que los solicita son relevantes para el caso y sustanciales para su resolución; (ii) ninguna de las objeciones contempladas en el Artículo 9.2 [de las Reglas de la IBA] es de aplicación; y (iii) los requisitos del Artículo 3.3 [de las reglas de la IBA] han sido cumplidos¹.
7. Las solicitudes de la Demandada Nos. 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 y 19 cumplen con estos requisitos. Por lo tanto, el Tribunal ha decidido aceptar estas solicitudes tal como se establece en esta decisión y en la Tabla Redfern.
8. Con respecto a la solicitud No. 9 de la Demandada, el Tribunal observa que las Demandantes no la han objetado. Sin embargo, al 17 de julio de 2018, las Demandantes no habían exhibido ningún documento en respuesta a esta solicitud. Ello encuentra una explicación en el hecho de que las Demandantes aceptaron exhibir documentos de respuesta con sujeción a un acuerdo previo con la Demandada “para proteger de la divulgación a cualquier información o dato personal y a la información

¹ Reglas de la IBA del 2010 sobre Práctica de Prueba en el Arbitraje Internacional (“Reglas de la IBA”), Artículo 3.7.

comercial confidencial incluida en los CDRs (Registros de detalle de llamadas)”². [Traducción del Tribunal]

9. Por lo que el Tribunal sabe, aún no se ha alcanzado un acuerdo al respecto. Por lo tanto, el Tribunal invitará a las Partes a hacerlo y ordena a las Demandantes a que confirmen si no cuentan con otros documentos en respuesta a esta solicitud más allá de los CDRs.
10. La Solicitud de Documentos Objetados restante es la solicitud No. 18 de la Demandada. Esta se refiere a “[e]l modelo de servicios conjuntos competitivos aplicado en los Estados Unidos” y se basa en el segundo informe del Dr. Dippon, el cual establece que “[c]on respecto a la cuarta línea de negocio, los servicios conjuntos competitivos, el Sr. Bello explica, ‘[y]a existían prácticas similares en la industria y entiendo que este proceso sería muy similar al modelo probado en los Estados Unidos’. [Traducción del Tribunal]
11. El Tribunal observa que el Dr. Dippon al mismo tiempo cita la declaración testimonial del Sr. Bello, quien no hace referencia a ningún documento en particular, sino que simplemente se refiere a un modelo de negocio que puede encontrarse descrito en documentos o no. En otras palabras, el Dr. Dippon simplemente formula una referencia cruzada general a la declaración testimonial del Sr. Bello, pero no se refiere a ningún documento en particular.
12. El Artículo 3.3. de las Reglas de la IBA, establece que una solicitud de exhibición de documentos debe contener “una descripción de cada Documento cuya exhibición se solicite que sea suficiente para identificarlo, o...una descripción suficientemente detallada (incluyendo el asunto de que se trate) de la concreta y específica categoría de Documentos requeridos que razonablemente se crea que existen”³. La solicitud No. 18 de la Demandada no identifica de manera suficiente el documento o categoría de documentos que solicitan.
13. Asimismo, las Reglas de la IBA también establecen que el Tribunal debería excluir la exhibición de cualquier documento que represente una “onerosidad o carga excesiva para la práctica de las pruebas solicitadas”⁴. El Tribunal considera que aceptar la solicitud No. 18 le impondría una carga excesiva a las Demandantes quienes se verían obligadas a buscar un número indefinido de documentos que describieran el modelo de los EE. UU. que solicita la Demandada, los cuales podrían estar o no estar en su posesión o control. Por lo tanto, fundándose en las Reglas de la IBA, el Tribunal rechazará la solicitud No. 18.

² Véase solicitud No. 9 de la Demandada.

³ Reglas de la IBA, Artículo 3.3.

⁴ Reglas de la IBA, Artículo 9.2.

III. LA DECISIÓN DEL TRIBUNAL

14. A la luz de lo que antecede, luego de haber examinado cuidadosamente las observaciones formuladas por las Partes y habiendo considerado cada una de las solicitudes de documentos en consideración del interés legítimo de las Demandantes y la razonabilidad de la carga impuesta sobre estas últimas, teniendo en cuenta todas las circunstancias relevantes, con inclusión del principio fundamental de integridad del procedimiento arbitral, el Tribunal por unanimidad resuelve:
15. Aceptar, de conformidad con los motivos que anteceden, las solicitudes de exhibición de documentos de la Demandada Nos. 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 y 19 con el alcance indicado en el Cronograma Redfern adjunto.
16. Rechazar la solicitud de exhibición de documentos de la Demandada No. 18 por los motivos explicados *supra*.
17. Los Demandantes tendrán hasta el 20 de agosto de 2018 para exhibir los documentos que deben exhibir conforme a esta Resolución Procesal.
18. El Tribunal invita a las Partes a alcanzar un acuerdo relativo a los procedimientos para proteger de la divulgación a cualquier información o dato personal y a la información comercial confidencial que contengan los CDRs y a informarle al Tribunal acerca de cualquier acuerdo, a más tardar, el 20 de agosto de 2018. Ante la ausencia de un acuerdo, el Tribunal decidirá sobre los procedimientos aplicables.
19. El calendario procesal para la etapa que sigue a esta exhibición de documentos será aquel establecido en el Calendario Procesal y el Cronograma de Exhibición de Documentos en los Anexos 1 y 2 de la Resolución Procesal No. 1, tal como fuera modificado por las Partes.

[*Firmado*]

Dr. Eduardo Zuleta Jaramillo
(Presidente)
En nombre y representación del Tribunal

Joshua Dean Nelson, in his own right and on behalf of Tele Fácil México S.A. de C.V. and
Jorge Luis Blanco v. the United Mexican States

ICSID Case No. UNCT/17/1

Mexico's second request for production of documents

I. Introduction

This request for production of documents is submitted pursuant to section 18 and Annex 2 of the Procedural Order No. 1 (PO1) dated 18 July 2017.

Section III of this request for documents (RFD) is divided into 4 subsections, each dealing with a specific issue. Some of the sections include a general justification for the documents covered therein which should be read together with the justification offered for each specific request for documents or category of documents.

This RFD seeks documents in possession or control of the Claimants or any associated third parties, such as lawyers, representatives, accountants or notaries, who may be in possession of the requested documents due to their current or previous professional business relationship with the Claimants.

Should any of the requested documents be deemed to be subject to privilege, the Respondent requests production of a privilege log similar to the one used in the first round of document production.

Finally, nothing in this request for production of documents shall be interpreted as an admission of any kind on the part of the Respondent.

II. Definitions

BGBG	Refers to the law firm Bello, Gallardo, Bonequi y García, S.C., Claimants' Mexican legal counsel.
Claimants	Refers to Joshua Dean Nelson, Jorge Luis Blanco and Tele Fácil.
Document	Means 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.
IFT	Refers to the Federal Telecommunications Institute.

Internal document	Means any Document, such as notes, memoranda, studies, analysis, opinions and reports, prepared by Tele Fácil’s senior management, directors, shareholders or any third party at their behest (<i>e.g.</i> , external advisors/consultants).
Reply	Refers to the Reply of Claimants filed on 6 June 2018.
Records of communications	Means any Document recording a communication between two or more identified or identifiable parties, such as letters, email, memoranda, notes and like documents.
Internal Records of Communications	Means records of communications between Tele Fácil’s senior management, directors, shareholders or external advisors/consultants.
Resolution 127	Refers to Resolution P/IFT/EXT/071 015/127 issued by the IFT on 7 October 2015.
Resolution 381	Refers to Resolution P/IFT/261114/381 issued by the IFT on 26 November 2014.
SoC	Refers to the Statement of Claim filed on 7 November 2017.
Tele Fácil	Tele Fácil México, S.A. de C.V.
Telmex	Refers to Teléfonos de Mexico, S.A.B. de C.V. and/or Teléfonos del Noroeste, S.A. de C.V.
Telmex Offer	Refers to Telmex’s standard framework agreement for interconnection sent to Tele Fácil on 26 August 2013.

III. Claimants’ General Responses and Objections to Respondent’s Request for Production of Documents

Pursuant to Article 18.9 of PO 1, objections to Respondent’s second request for production of documents (Second RFD) shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules). Of particular relevance to Respondent’s Second RFD is Article 9(2)(b), which provides the following grounds for objection: “(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable...”

In Procedural Order No. 5, the Tribunal determined the scope of the privilege for production of documents, indicating that “request[s] to produce documents deemed privileged under the

US law on attorney-client privilege or work product doctrine... cannot be upheld.”⁵ Claimants are mindful that the Tribunal noted that the attorney-client privilege and the work product do not apply in six specific areas where Claimants have adduced testimony by their Mexican legal counsel.⁶

In addition, pursuant to Article 18.5 of PO 1, Respondent’s requests for documentation must comply with the requisites established in Article 3(3) of the IBA Rules.

Considering the above, Claimants hereby make the objections below to Respondent’s requests. Claimants also note where they have already submitted documents to Respondent that Respondent now requests or that are readily available in the public domain.

IV. Respondent’s Reply to the Claimants’ General Responses and Objections

Several of the objections presented by the Claimants state that the requested documentation either have been produced in response to Respondent’s First RFD or are publicly available. However, a simple reading of the description shows that the requested documents are not necessarily covered by the Respondent’s previous requests. In these cases, the Respondent has alluded to this fact and requested that the Claimants confirm that there are no responsive documents.

In the case of documents that are said to be in the public domain, the Respondent will observe that in many cases the Claimants have failed to identify them and thus, it is impossible for the Respondent to determine whether they can be obtained from public sources.

Finally, the Respondent will also note that Article 3.1 of the IBA Rules states that “each Party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies, including public Documents and those in the public domain” and although the Tribunal is not bound by the IBA Rules, it may refer to them for guidance as to the practices commonly accepted in international arbitration, pursuant to paragraph 13 of Procedural Order No. 1.

V. Document Requests

A. Alleged renewal of Telmex’s Offer

Request No.	1.
Document / Category of Documents:	Internal documents and Internal Records of Communications discussing Telmex’s alleged renewal of its original offer during the meetings held on 6 May 2014 and 27 June 2014 between Tele Fácil and Telmex. This request seeks documents created/distributed between 6 May 2014 and 10 July 2014.

⁵ PO No. 5, ¶ 21.

⁶ Id. ¶ 22.

<p>Justifications:</p>	<p>One of the Claimants’ key factual allegations in this case is that Tele Fácil and Telmex had a binding agreement on interconnection rates. This agreement was allegedly struck when Tele Fácil accepted in mid 2014 Telmex’s initial offer made in August 2013.</p> <p>The Respondent disputed this allegation and included, with its Counter-Memorial, expert evidence in support of the contention that the Telmex Offer had already expired when Tele Fácil allegedly accepted it.</p> <p>In their Reply, the Claimants now allege that the Respondent ignores unrebutted evidence that Telmex Offer was renewed on 6 May 2014 and 27 June 2014 during meetings between Messrs. Bello, Sacasa and Mr. Gallaga (Telmex’s representative).⁷ In addition, Claimants argue that Mr. Buj’s opinion regarding Telmex Offer expiration is entirely unreliable.⁸</p> <p>The requested documents are relevant to the case and material to its outcome because they will show whether Telmex did in fact renew its offer in May and June 2014 and, importantly, whether at the time Tele Fácil believed Telmex renewed its offer during the referred meetings. The documents are material to the outcome of the case because the Claimants’ claims rely on the existence of this alleged contract with Telmex.</p> <p>In addition, the documents requested under this section are relevant and material for the outcome of the case because they are necessary to determine whether the Telmex Offer was capable of being accepted by Tele Fácil in July 2014, immediately before Tele Fácil submitted its interconnection dispute to IFT.</p> <p>The Respondent reasonably believes that the requested documents exist and are in the possession, custody or control of the Claimants because, as the Claimants have stated in their Statement of Claim and in their Reply, having an agreement with Telmex was crucial to their efforts of establishing operations in Mexico.⁹ Therefore, it is reasonable to expect that they would have recorded and kept any discussions regarding the alleged renewal of the Telmex Offer they claim to have subsequently accepted to establish the alleged agreement on rates.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p>
<p>Objections:</p>	<p>The requested documents have already been covered by Respondent’s First RFD. Of the requests included within the Tribunal’s decisions on Respondent’s first request for production of documents (Procedural Order No. 5), Respondent requested the following:</p>

⁷ Reply, ¶ 67, 70.

⁸ Reply, ¶ 74.

⁹ SoC, ¶ 78; Reply ¶ 91.

	<p>Request No. 7, “Records of communications between Tele Fácil (or any person or entity acting on its behalf) and Telmex (or any person or entity acting on its behalf) between 1 August 2013 and 11 July 2014 regarding:</p> <ul style="list-style-type: none"> a) interconnection with Telmex; b) the Telmex Offer or any other proposal on the terms for interconnection...” <p>Request No. 9 “Internal documents and records of communications between Tele Fácil’s senior management, directors, shareholders and/or external advisors, discussing:</p> <p>...</p> <ul style="list-style-type: none"> c) the impact of the PEA Declaration and/or the PEA Rate Decision on: the negotiations with Telmex, the Telmex Offer (or any aspect thereof) or any other proposed terms for interconnection. <p>This request refers to documents prepared between 6 March 2014 and 11 July 2014.”</p> <p>Request No. 10 “Internal documents, records of communication between Tele Fácil’s senior management, directors, shareholders and/or external advisors, and minutes of the Board of Directors concerning:</p> <ul style="list-style-type: none"> a) the decision to accept the Telmex Offer... <p>This request refers to documents prepared between 26 August 2013 and 11 July 2014”</p> <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request, considering the term limitation established by Respondent for this request (between 6 May 2014 and 10 July 2014):</p> <ul style="list-style-type: none"> • CLAIMANT0001472 • CLAIMANT0001479 • CLAIMANT0001480 • CLAIMANT0001482 • CLAIMANT0001488 • CLAIMANT0001490 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
Reply:	<p>The Claimant argued for the first time in its Reply that Telmex renewed its original offer of August 2013 during meetings that transpired between May and June 2014. This request for documents concerns this alleged</p>

	<p>“renewal” and differs from Respondent’s Request 7 made during the previous round of document production.</p> <p>The Respondent requests this Tribunal to order the Claimants to confirm that they do not possess documents and/or records of communications discussing this alleged renewal of the Telmex Offer.</p>
Tribunal’s decision:	<p>Granted. The Tribunal notes that Claimants allege that they have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

Request No.	2.
Document / Category of Documents:	<p>Records of communications between Tele Fácil (or any person or entity acting on its behalf) and Telmex (or any person or entity acting on its behalf) discussing Telmex’s renewal of its original offer during the meetings held on 6 May 2014 and 27 June 2014 between Tele Fácil and Telmex.</p> <p>This request applies to records of communications exchanged between May 2014 and 10 July 2014.</p>
Justifications:	Same justification as in Request 1.
Objections:	<p>As in the previous objection, the requested documents have already been covered by Respondent’s First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 7, “Records of communications between Tele Fácil (or any person or entity acting on its behalf) and Telmex (or any person or entity acting on its behalf) between 1 August 2013 and 11 July 2014 regarding:</p> <ol style="list-style-type: none"> a) interconnection with Telmex; b) the Telmex Offer or any other proposal on the terms for interconnection...” <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request considering the term limitation established by Respondent for this request (between 6 May 2014 and 10 July 2014):</p> <ul style="list-style-type: none"> • CLAIMANT0001479

	<ul style="list-style-type: none"> • CLAIMANT0001480 • CLAIMANT0001482 • CLAIMANT0001486 • CLAIMANT0001488 • CLAIMANT0001490 • CLAIMANT0001493 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
<p>Reply:</p>	<p>The Respondent maintains that the present request differs from its previous Request No. 5. As noted earlier, the Claimants have argued for the first time in the Reply that Telmex renewed its August 2013 offer in May and June of 2014.</p> <p>It also bears noting that when Mexican telecommunications operators negotiate interconnection terms they normally exchange proposals in writing so that, in case they fail to reach an agreement, they are able to prove to IFT that the parties have negotiated in good faith for the prescribed period of time and IFT intervention is warranted. For example, in the present case:</p> <ol style="list-style-type: none"> 1. On 7 August 2013 Tele Fácil formally requested interconnection with Telmex through a public deed¹⁰, and 2. On 26 August 2013 Telmex responded to Tele Fácil’s request for interconnection through a public deed attaching a standard framework agreement.¹¹ <p>The Respondent maintains that something as significant as the renewal of Telmex’ August 2013 offer would have been discussed and recorded in communications between the parties. The Respondent, therefore, respectfully requests that the Tribunal order the Claimants to confirm that there are no documents responsive to this request.</p>
<p>Tribunal’s decision:</p>	<p>Granted. The Tribunal notes that Claimants alleged that they have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

¹⁰ Claimants’ Statement of Claims ¶84.

¹¹ Claimants’ Statement of Claims ¶85.

B. Domestic court proceedings

Request No.	3.
Document / Category of Documents:	<p>Internal documents and Internal Records of Communications, discussing any of the following matters:</p> <ul style="list-style-type: none"> a) Ms. Mayorga’s inability to file the appeal against the Amparo Resolution 1381/2015. b) The time of filing of the appeal on 11 February 2016; c) The legal opinion provided by Tele Fácil’s Mexican counsel regarding the failure to submit the appeal against the Amparo Resolution 1381/2015. d) The Minutes of Fact dated 15 February 2016 <p>Should any of the requested documents be deemed to be subject to privilege, the Respondent requests production of a privilege log.</p> <p>This request seeks documents created between 10 February and 10 March 2016.</p>
Justifications:	<p>The Claimants argue that Mexico breached Article 1105 of the NAFTA by impeding the Claimants to file an appeal to an adverse <i>amparo</i> ruling.¹² The Claimants argue that the security officers of the Office of Correspondence of Common Correspondence did not allow Ms. Mayorga to file the <i>amparo</i> appeal on 11 February 2016 at 23:58 pm and refused to receive the <i>amparo</i> appeal on 12 February 2016 at 8:40 am.¹³</p> <p>The requested documents are relevant to the case and material to its outcome because they will provide important insight into the facts and circumstances that give rise to the claim of breach of Article 1105. In particular, whether the Claimants’ account of the events of 11 and 12 February 2016 is consistent with contemporaneous evidence of the same.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent reasonably believes that the requested documents exist and are in the possession, custody or control of the Claimants because Ms. Mayorga’s inability to file the appeal (and the reasons thereof) would have been perceived as a significant event for the company and would have triggered internal communications and documents to inform Tele</p>

¹² Reply, ¶ 386.

¹³ Reply, ¶372-373.

	Fácil's senior management/shareholders of the situation and discuss potential ways to remedy the same.
Objections:	Claimants have no documents responsive to this request.
Reply:	<p>The Respondent finds it hard to believe that there are no responsive documents to this request, especially considering the significance that the Claimants ascribe to their inability to file their appeal.</p> <p>In any legal system, failing to meet a litigation deadline is a sensitive issue. It is thus reasonable to believe that Tele Fácil would have been informed immediately that Ms. Mayorga (an associate of BGBG) was unable to file the <i>amparo</i> appeal on the due date and that this significant event would have been discussed by Tele Fácil's shareholders, managers and external advisors.</p> <p>The Respondent further observes that the Claimants have not asserted privilege over any documents.</p> <p>The Respondent requests the Tribunal to instruct the Claimants to confirm that no responsive documents exist.</p>
Tribunal's decision:	Granted. The Tribunal instructs Claimants to confirm that no responsive documents to this request exist.

C. Tandem services

Request No.	4.
Document / Category of Documents:	<p>Internal documents and Internal Records of Communications discussing and/or explaining:</p> <ul style="list-style-type: none"> a) plans to offer the so-called Competitive Tandem Services in Mexico; b) how Competitive Tandem Services would be implemented; c) the economic viability of Competitive Tandem Services (including financial projections, market analyses, potential demand/clients, business plans); d) the legality of Competitive Tandem Services; e) contacts and agreements with potential clients of Competitive Tandem Services. <p>This request concerns documents prepared between 2013 and 2016. Should any of the requested documents be deemed to be subject to privilege, the Respondent requests production of a privilege log.</p>

<p>Justifications:</p>	<p>Mexico noted at paragraph 363 of the Statement of Defense that: “[n]either the Business Plan nor Mr. Sacasa’s email mentions Competitive Tandem Services at all. In fact, it appears that this line of business was conceived in 2017 –after the Claimants submitted their Notice of intent and Notice of Arbitration– in order to maximize the claim for damages.”</p> <p>Mexico went on to quote a document prepared in May 2017 that appears to support that view:</p> <p><i>It is important to point out that the final dimensions of the proposed project must be tied to a modeling study that reveals, in the light of the real fixed telephony traffic flowing between Telmex and the rest of the Public Telecommunications Networks (RPTs), what the final magnitude of this project will be and that it is within the legal and regulatory framework armor of what is proposed (this last [point] must be included in the modeling to be done). <u>So that it can be incorporated in the end in the financial damages model in the NAFTA claim with the confidence that it is dully grounded and supported, which will contribute to increase the credibility of what is to be presented to the International Arbitral Panel and evidently will increase the amount of the claim.</u> [Emphasis added]</i></p> <p>The requested documents are relevant to the case and material to its outcome as they will show: (i) whether or not there was a plan to offer Competitive Tandem Services in Mexico, and if so, (ii) whether contemporaneous projections, studies and analysis are consistent with the claim for damages arising from this line of business. They will also provide important insight into the legality of the intended line of business (also a contentious point) and how exactly it was intended to operate. This information will assist the Respondent’s damages and legal experts to further elaborate on their opinions to rebut the Claimants’ evidence.</p> <p>If Tele Fácil did in fact intend to offer these services (<i>i.e.</i>, Competitive Tandem Services) it is reasonable to assume that the requested documents exist and are in the possession, custody or control of the Claimants as they would have been prepared and kept in the ordinary course of business.</p> <p>The requested documents are not in the Respondent’s custody or control.</p>
<p>Objections:</p>	<p>The requested documents have already been covered by Respondent’s First RFD. Of the requests contained on Procedural Order No. 5, Respondent has already requested the following:</p> <p>Request No. 3, “The amended business plan referred to in section II.E (“Tele Fácil Adapts Its Business Plan to the Changed Regulatory</p>

	<p>Environment”), including annexes and any internal documents containing any of the following analysis prepared in connection with the amended business plan:</p> <p>a) financial projections (in excel if available) of all 4 proposed lines of business (i.e., DID/Conferencing Project; International Traffic Termination Project; Competitive Tandem Services Project; Retail Service Offering);</p> <p>...</p> <p>Request No. 5 “Internal documents and records of communications between Tele Fácil’s senior management, directors, shareholders and/or external advisors, discussing the revised business plan and/or any of the 4 projects identified in section II.E (... Competitive Tandem Services Project; ...).</p> <p>This request refers to documents prepared between 11 July 2014 and 8 April 2015”</p> <p>Claimants remind Respondent that, among others, the following documents have already been listed in the privilege log that would be responsive to this request::</p> <ul style="list-style-type: none"> • CLAIMANT4406 • CLAIMANT4407 • CLAIMANT4414 • CLAIMANT4415 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
Reply:	The Respondent takes note of the Claimants response that they are not in possession of any documents that would be responsive to this request, other than the four documents identified in their objection.
Tribunal’s decision:	Considering Respondent’s Reply, no decision from the Tribunal is required.

Request No.	5
Document / Category of Documents:	Copies of any agreements, draft agreements or MOUs between Tele Fácil and any other telecom operator in Mexico regarding Competitive

	Tandem Services, referred to at ¶ 19 of Dr. Mariscal’s reply expert report. ¹⁴
Justifications:	<p>Same justification as the previous request.</p> <p>In addition, according to Dr. Mariscal; “<i>Tele Fácil’s business model was directed at the wholesale market, not the end user or retail market</i>”.¹⁵ The latter, “<i>by providing calling termination services to other operators</i>”.¹⁶ In fact, Dr. Mariscal has already argued that Tele Fácil was foreseeing a transfer equivalent to the 50% of subscribers or clients from companies other than Telmex (“NCR”) to Tele Fácil’s network.¹⁷ The requested documents are also relevant to the case and material to its outcome because they will allow the Respondent’s expert to challenge Dr. Mariscal’s assertions and/or assumptions.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3) the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The agreements executed by Tele Fácil and the seven other operators (and any other operator) with the purpose to provide calling termination services through the competitive tandem services, in its original file format, fall into that category.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the agreements executed with seven telecommunication operators.</p>
Objections:	<p>The documents relied on by Dr. Mariscal in her first report have already been covered by Respondent’s First RFD. Of the requests contained on Procedural Order No. 5, Respondent has already requested the following:</p> <p>Request No. 25 “Records of communications, draft proposals, MoU’s and concluded agreements between Tele Fácil and other operators</p>

¹⁴ For example, Grupo Televisa, Telefónica, Axtel, Megacable, Total Play, Maxcom and Marcatel. *See* Dr. Mariscal’s Reply Expert Report ¶19; C-113.

¹⁵ Dr. Mariscal’s Reply Expert Report ¶19; C-113.

¹⁶ *Id.*

¹⁷ Dr. Mariscal’s Expert Report ¶122; C-011.

	<p>(including Telefonica) regarding the negotiations referred to at ¶ 127 of Dr. Mariscal’s expert report.”</p> <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
Reply:	The Respondent takes note of the Claimants’ response that they do not have any further responsive documents.
Tribunal’s decision:	Considering Respondent’s Reply, no decision from the Tribunal is required.

Request No.	6
Document / Category of Documents:	Internal documents and records of communications addressing/discussing Competitive Tandem Services relied on by Dr. Elisa Mariscal in preparation of her reply expert report on damages.
Justifications:	<p>Same justification as the previous request.</p> <p>In addition, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3) the expert reports <i>shall</i> contain <i>inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”.</p>
Objections:	<p>The documents relied on by Dr. Mariscal in her first report have already been covered by Respondent’s First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 24 “All documents relied on by Dr. Elisa Mariscal in her report, including, but not limited to:</p> <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request, considering the term established from 6 May 2014 and 10 July 2014:</p> <ul style="list-style-type: none"> • CLAIMANT0003803 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>

Reply:	<p>The Respondent observes that no Internal documents and records of communications addressing the Competitive Tandem Services relied on by Dr. Mariscal have been produced.</p> <p>The Respondent also observes that, contrary to what is stated in the objection, this request is not limited to the period between 6 May and 10 July 2014.</p> <p>In view of the foregoing, the Respondent requests this Tribunal to instruct the Claimants to confirm that there are no responsive documents to this request.</p> <p>Should the Claimants take the position that any or all responsive documents have already been produced pursuant to a previous and more general request (e.g., Request 24 of Mexico’s First RFD) the Respondent requests that all such documents be identified by the Claimants.</p>
Tribunal’s decision:	<p>Granted. The Tribunal notes that Claimants allege that have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

Request No.	7
Document / Category of Documents:	<p>Internal documents, and Internal Records of Communications informing and/or discussing the viability of Competitive Tandem Services, and the full transfer of subscribers or clients from companies other than Telmex (“NCR”) to Tele Fácil’s network. This request includes any legal or technical documentary support included in or attached to the requested documents, including technical documentation explaining how the transfer of subscribers would take place.</p>
Justifications:	<p>In his second statement, Mr. Bello states that the geographic number transfer process and the number portability process are “<i>entirely different concepts</i>”.¹⁸ This conclusion is adopted by Dr. Mariscal and quoted in her reply expert report with the purpose of demonstrating the legality of the transfer of numbering blocks.¹⁹</p> <p>The requested documents are relevant to the case and material to its outcome as they will provide important insight into the legality of the intended line of business (also a contentious point) and how exactly it</p>

¹⁸ Carlos Bello’s second witness statement ¶¶4-7, C-109.

¹⁹ Dr. Mariscal’s Reply Expert Report ¶¶10; C-113.

	<p>was intended to operate. This information will also assist the Respondent's damages and legal experts to further elaborate on their opinions to rebut the Claimants' evidence.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the agreements executed with seven telecommunication operators.</p>
<p>Objections:</p>	<p>The documents relied on By Dr. Mariscal in her first report have already been covered by Respondent's First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 24 "All documents relied on by Dr. Elisa Mariscal in her report, including, but not limited to:</p> <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request, considering the term established from 6 May 2014 and 10 July 2014:</p> <ul style="list-style-type: none"> • CLAIMANT0003803 <p>There are no other documents in Claimants' possession that meet the description of Respondent's Request.</p>
<p>Reply:</p>	<p>The Respondent observes that, contrary to what is suggested in the Claimants' objections, this request is not limited to documents relied upon by Dr. Mariscal and thus, would not necessarily be covered by Mexico's previous Request 24.</p> <p>Mexico further observes that, contrary to what is stated in the objection, this request is not limited to the period between 6 May and 10 July 2014.</p> <p>In view of the foregoing, the Respondent requests this Tribunal to instruct the Claimants to confirm whether there are any responsive documents to this request.</p> <p>Should the Claimants take the position that any or all responsive documents have already been produced pursuant to a previous and more general request (e.g., Request 24 of Mexico's First RFD) the Respondent requests that all such documents be identified by the Claimants.</p>

Tribunal’s decision:	Granted. The Tribunal notes that Claimants allege that they have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced. Also, the Tribunal requests Claimants to identify all responsive documents that have already been produced pursuant to a previous and more general request.
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D. Damages

General justification

The parties have agreed that, pursuant to Article 5(2) of the IBA Rules, expert reports *shall* include *inter alia*: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. Hence, it is necessary for a party to have the complete set of documents relied on by the other party’s expert, in order to properly evaluate assertions made in the expert report.

The requested documents under this section are necessary to properly understand, evaluate and challenge assertions made in the expert report and the Claimants’ assessment of damages.

Request No.	8
Document / Category of Documents:	The Documents containing the data and information relied upon by Dr. Dippon in his reply report for the purpose of determining Future Telecom’s traffic – <i>i.e.</i> in addition to the Memorandum of Understanding executed by Tele FÁCil and Future Telecom.
Justifications:	<p>Dr. Dippon states that his estimations regarding Tele FÁCil’s international termination traffic were based on “<i>the actual Memorandum of Understanding between Future Telecom and Tele FÁCil and actual Future Telecom traffic</i>”.²⁰ However, Claimants’ expert did not attach to his expert report any documents containing that data.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall</i> contain <i>inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The documents relied upon by Dr. Dippon to estimate Tele FÁCil’s international termination traffic fall into that category.</p>

²⁰ Dr. Dippon’s Reply Expert Report, ¶ 147; C-112.

	<p>The requested documents are relevant to the case and material to its outcome because they are necessary to understand Dr. Dippon’s assertions and challenge his assessment of damages.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to Future telecom traffic for Tele Fácil’s business.</p>
<p>Objections:</p>	<p>The documents relied on by Dr. Dippon in his first expert report to determine Future Telecom’s traffic have already been covered by Respondent’s First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 21 “All documents relied on by Dr. Christian Dippon in preparation of his report, including, but not limited to:</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">9. Documents containing the data obtained from Future Telecom, including but not limited to international traffic by country and rates for Mexico...”</p> <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request:</p> <ul style="list-style-type: none"> • CLAIMANT0003340 • CLAIMANT0003341 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
<p>Reply:</p>	<p>The Respondent observes that this request concerns documents relied upon by Dr. Dippon in preparation his <u>reply</u> report, whereas Request 21 in Mexico’s First RFD concerned documents relied upon by Dr. Dippon in his first report.</p> <p>Mexico further notes (as pointed out in the justification) that the “Claimants’ expert did not attach to his expert report any documents containing that data”.</p> <p>In view of the foregoing, the Respondent requests this Tribunal to instruct the Claimants to confirm whether there are any responsive documents to this request.</p>

	Should the Claimants take the position that any or all responsive documents have already been produced pursuant to a previous and more general request (e.g., Request 21 of Mexico’s First RFD) the Respondent requests that all such documents be identified by the Claimants.
Tribunal’s decision:	Granted. The Tribunal notes that Claimants allege that have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced. Also, the Tribunal requests Claimants to identify all responsive documents that have already been produced pursuant to a previous and more general request.

Request No.	9
Document / Category of Documents:	<p>Documents and Records of Communications containing data on Future Telecom’s traffic sent to Mexico, including but not limited to:</p> <ol style="list-style-type: none"> 1. Invoices issued by Future Telecom; 2. Internal documents, and internal records of communications discussing Future Telecom’s traffic. 3. Agreements concluded between Future Telecom and Tele Fácil, in addition to the memorandum of understanding concluded on 14 July 2014 (C-020). <p>This request seeks documents between 2010 and 2017.</p>
Justifications:	<p>Dr. Dippon states that his estimations regarding Tele Fácil’s international termination traffic were based on “<i>the actual Memorandum of Understanding between Future Telecom and Tele Fácil and actual Future Telecom traffic</i>”.²¹ However, Claimants’ expert did not attach to his expert report any documents containing that data.</p> <p>The requested documents are relevant to the case and material to its outcome because they are necessary to rebut Dr. Dippon’s assertions on traffic volume and challenge his assessment of damages.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would</p>

²¹ Dr. Dippon’s Reply Expert Report, ¶ 147; C-112.

	<p>have been prepared and kept in the ordinary course of business given the importance attributed to Future telecom traffic for Tele Fácil's business.</p>
<p>Objections:</p>	<p>The documents relied on by Dr. Dippon in his first expert report to determine Future Telecom's traffic have already been covered by Respondent's First RFD.</p> <p>With the exception of privileged materials excluded from production, which will be included in the corresponding privilege log, Claimants do not object to Respondent's Request and will produce responsive materials in its possession subject to agreement with Respondent or in the absence of agreement, order of the Tribunal, establishing procedures (e.g., redaction and/or restricted access by Respondent's counsel and damages experts in this proceeding, and to not, under any circumstances, be shared in any way with any official or employee of the IFT) to protect from disclosure any personal data or information and confidential business information contained in the CDRs (Call Detail Records). The CDRs provided by Future Telecom constitute highly-confidential business information of Future Telecom and also include sensitive personal information regarding the calls made by the end users whose traffic was carried by Future Telecom. As a result, additional limitations on their distribution and use is warranted.</p>
<p>Reply:</p>	<p>The Respondent observes that the Claimants have not produced any documents related to this request.</p> <p>Furthermore, Future Telecom's CDRs would not respond to any of the points 1 through 3 identified in this request. The Respondent respectfully requests that the Tribunal instruct the Claimants to confirm that they are not in possession or control of any responsive documents.</p> <p>The CDRs that the Claimants have offered to produce could in principle contain information on traffic volumes that could potentially be responsive to Request 8 above and thus, the Respondent will accept the offer.</p> <p>The Respondent undertakes not to share the documents with IFT's officials or employees without prior authorization by the Tribunal.</p>
<p>Tribunal's decision:</p>	<p>Granted. The Tribunal instructs Claimants to confirm to Respondent and to the Tribunal that Claimants are not in possession or control of any documents responsive to this request other than the CDRs. As far as the CDRs are concerned, the Tribunal invites the Parties to agree on procedures to protect from disclosure any personal data or information and confidential business information contained in the CDRs and inform the Tribunal of any agreement. In the absence of an agreement the Tribunal will rule on the applicable procedures.</p>

Request No.	10
Document / Category of Documents:	Documents containing the data relied on by Dr. Dippon for the proposition that the “but-for international termination traffic” is based on “actual Future Telecom traffic” (¶8, bullet 3) and “actual international termination rates paid by Future Telecom” (¶8, bullet 6). This request includes, but it is not limited to, Future Telecom’s contracts for traffic sent to Mexico, independently of any alleged agreement concluded with Tele Fácil.
Justifications:	<p>As noted in the request, Dr. Dippon states that his estimations regarding Tele Fácil’s “<i>but-for international termination traffic</i>” are based on “<i>actual Future Telecom traffic</i>” (¶8, bullet 3) and “<i>actual international termination rates paid by Future Telecom</i>” (¶8, bullet 6). However, he did not include the source documents used for the “actual Future Telecom traffic” or the “actual international rates paid by Future Telecom”.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The documents containing the data relied on by Dr. Dippon for the proposition that the “but-for international termination traffic” are based on “actual Future Telecom traffic” and “actual international termination rates paid by Future Telecom” fall into that category.</p> <p>The requested documents are also relevant to the case and material to its outcome because they are necessary to understand Dr. Dippon’s assertions and challenge his assessment of damages.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to Future telecom traffic for Tele Fácil’s business.</p>
Objections:	<p>The documents relied on by Dr. Dippon in his first expert report and reply expert report to determine Future Telecom’s traffic and for the proposition that the “but-for international termination traffic” is based on “actual Future Telecom traffic” and “actual international termination rates paid by Future Telecom” have already been covered by Respondent’s previous RFDs.</p> <p>This is clear in Dr. Dippon’s Reply Report, which states in its paragraph 78 that “The actual Future Telecom split between codes 52 and 521 during January 2015 to April 2016 is 59 percent mobile and 41 percent landline, similar to the estimated split mentioned by Marcatel.” This</p>

	<p>statement has as support footnote 136, which cites to the document that has already been produced as CLAIMANT0003298.</p> <p>There are no other documents in Claimants' possession that meet the description of Respondent's Request.</p>
Reply:	The Respondent takes note that Claimants do not have other responsive documents to this Request, or no further responsive documents exist other than the one identified in the Claimants' objections.
Tribunal's decision:	Considering Respondent's Reply, no decision from the Tribunal is required.

Request No.	11
Document / Category of Documents:	The Documents relied on by Dr. Dippon in his second expert report related to FreeCC ²² , AudioNow, SIP Meeting and any other DID vendor's plans to aggressively develop DID services in the Mexican market, promote and do marketing activities and capture local traffic. ²³
Justifications:	<p>The Respondent intends to challenge Dr. Dippon's assertion that FreeCC and other DID vendor's commercial strategy was designed to ensure higher growth in Mexico than in any other market in which it participated and, because of that, the data that the Respondent's expert had to rely upon for countries other than Mexico is not comparable.²⁴</p> <p>The requested documents are relevant to the case and material to its outcome because they are necessary to challenge Mr. Dippon's assertions and fully understand his assessment of damages.</p> <p>In addition, Dr. Dippon has stated that DID demand in the United States is the relevant standard to determine Tele Fácil's DID lost revenues because DID services in the United States were provided and operated in the same way as they would have operated in Mexico. That is the reason why Dr. Dippon "forecasted" the DID demand in Mexico, using "actual historic data" of companies (<i>i.e.</i> FreeCC, NCC, AudioNow, SIP, among other) that had indicated interest in entering in the Mexican market.²⁵The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall</i> contain <i>inter alia</i>: the "Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided".</p>

²² Free Conference Calling.

²³ Dr. Dippon's Reply Expert Report, ¶ 9; C-112.

²⁴ *Id.*

²⁵ Dr. Dippon's Reply Expert Report, ¶ 87; C-112.

	<p>The documentation analysed and used by Dr. Dippon to conclude that FreeCC and other DID vendors had plans to develop aggressively DID services in the Mexican market constitutes one of such documents.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p>
<p>Objections:</p>	<p>The documents relied on by Dr. Dippon in his first expert report to determine his conclusions on these matters have already been covered by Respondent’s First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 21 “All documents relied on by Dr. Christian Dippon in preparation of his report, including, but not limited to: 1. The “Client Data” documents listed in Appendix B...”</p> <p>Request No. 32, “Records of communications between Tele Facil or any of its shareholders (or any person or entity on their behalf) and the following companies identified in Mr. Dippon’s expert report regarding business opportunities with Tele Fácil in Mexico:</p> <ul style="list-style-type: none"> a) Zenofón; b) No Cost Conferencing; c) SIP Meeting; d) Alpine Audio Now; e) FreeConferenceCall... <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request:</p> <ul style="list-style-type: none"> • CLAIMANT0003320 • CLAIMANT0003321 • CLAIMANT0003322 • CLAIMANT0003323 • CLAIMANT0003339 • CLAIMANT0003799 • CLAIMANT0003800 • CLAIMANT0003801 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
<p>Reply:</p>	<p>The Respondent observes that this request for documents is not limited to documents relied upon by Dr. Dippon in preparation of this first report,</p>

	<p>but rather “[t]he Documents relied on by Dr. Dippon in his second expert report”.</p> <p>The Respondent further observes that the documents identified in the Claimants’ objections are not responsive to the request as they do not include any marketing or other “plans to aggressively develop DID services in the Mexican market, promote and do marketing activities and capture local traffic”.</p> <p>In view of the foregoing, the Respondent requests that the Claimants confirm that there are not in possession of any responsive documents.</p>
Tribunal’s decision:	<p>Granted. The Tribunal notes that Claimants allege that they have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

Request No.	12
Document / Category of Documents:	The Documents relied on by Dr. Dippon in his reply expert report to estimate traffic volume from AudioNow and SIP Meeting, No Cost Conference and Zenofon. ²⁶
Justifications:	<p>Dr. Dippon criticises the Respondent’s expert for using data from AudioNow and SIP, arguing that such information, unlike the data used in the case of FreeCC (which was not disclosed), was very limited.²⁷</p> <p>The requested documents are relevant and material to the outcome of the case as they will be used to challenge Dr. Dippon’s assertion that that Respondent’s expert wrongfully “<i>uses international data from FreeCC despite having no knowledge as to whether FreeCC’s experiences are indicative of the experiences of other DID vendors</i>”, such as AudioNow, SIP Meeting, No Cost Conference and Zenofon, among others.²⁸</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The documentation analysed and used by Dr. Dippon related</p>

²⁶ Dr. Dippon’s Reply Expert Report, ¶ 9; C-112.

²⁷ *Id.*

²⁸ *Id.*

	<p>to AudioNow, SIP Meeting, No Cost Conference, Zenofon, and other DID vendors traffic constitutes one of such documents.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because Dr. Dippon use them in his expert report.</p>
<p>Objections:</p>	<p>The documents relied on by Dr. Dippon in his first expert report to determine his conclusions on these matters have already been covered by Respondent’s First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 21 “All documents relied on by Dr. Christian Dippon in preparation of his report, including, but not limited to: 1. The “Client Data” documents listed in Appendix B...”</p> <p>Request No. 32, “Records of communications between Tele Facil or any of its shareholders (or any person or entity on their behalf) and the following companies identified in Mr. Dippon’s expert report regarding business opportunities with Tele Fácil in Mexico:</p> <ol style="list-style-type: none"> a) Zenofón; b) No Cost Conferencing; c) SIP Meeting; d) Alpine Audio Now; e) FreeConferenceCall... <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request:</p> <ul style="list-style-type: none"> • CLAIMANT0003320 • CLAIMANT0003321 • CLAIMANT0003322 • CLAIMANT0003323 • CLAIMANT0003339 • CLAIMANT0003799 • CLAIMANT0003800 • CLAIMANT0003801 <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
<p>Reply:</p>	<p>The Respondent observes that this request for documents is not limited to documents relied upon by Dr. Dippon in preparation of this first report,</p>

	<p>but rather “[t]he Documents relied on by Dr. Dippon in his reply expert report [...]”.</p> <p>In view of the foregoing, the Respondent requests that the Claimants confirm that there are no responsive documents other than the ones identified in their objections.</p>
Tribunal’s decision:	<p>Granted. The Tribunal notes that Claimants allege that they have already produced responsive documents and that “[t]here are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

Request No.	13
Document / Category of Documents:	Internal documents, Documents and Internal Records of Communications containing the estimated traffic volume from AudioNow, SIP Meeting, No Cost Conference and Zenofon and any other DID vendor. ²⁹
Justifications:	<p>As stated in the previous Request, Dr. Dippon criticises the Respondent’s expert for using data from AudioNow and SIP, arguing that such information, unlike the data used in the case of FreeCC (which was not disclosed), was very limited.³⁰</p> <p>The Respondent requires additional traffic data from AudioNow, SIP Meeting, No Cost Conference and Zenofon and any other DID vendor, for at least the same number of years as that provided for FreeCC, and for a representative sample of countries including, but not limited to, Australia, Brazil, Canada, France, Germany, Puerto Rico, United Kingdom, which are the selected countries of operation highlighted by Dr. Dippon in its first report.³¹</p> <p>The requested documents are relevant and material to the outcome of the case as they will be used to challenge Dr. Dippon’s assertion that that Respondent’s expert wrongfully “<i>used international data from Free Conference Calling despite having no knowledge as to whether FreeCC’s experience are indicative of the experiences of other DID vendors, like Audio Now and SIP</i>”.³²</p>

²⁹ Dr. Dippon’s Reply Expert Report, ¶ 9; C-112.

³⁰ Dr. Dippon’s Reply Expert Report, ¶ 9; C-112.

³¹ Dr. Dippon’s Expert Report, ¶¶44-50; C-010.

³² Dr. Dippon’s Reply Expert Report, ¶ 9; C-112.

	<p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to Future telecom traffic for Tele Fácil's business.</p>
Objections:	<p>The documents relied on by Dr. Dippon in his first expert report to determine his conclusions on these matters have already been covered by Respondent's First RFD. On the requests contained on Procedural Order No. 5, Respondent had already requested the following:</p> <p>Request No. 21 "All documents relied on by Dr. Christian Dippon in preparation of his report, including, but not limited to: 1. The "Client Data" documents listed in Appendix B..."</p> <p>Request No. 32, "Records of communications between Tele Facil or any of its shareholders (or any person or entity on their behalf) and the following companies identified in Mr. Dippon's expert report regarding business opportunities with Tele Fácil in Mexico:</p> <ul style="list-style-type: none">a) Zenofón;b) No Cost Conferencing;c) SIP Meeting;d) Alpine Audio Now;e) FreeConferenceCall... <p>Claimants remind Respondent that, among others, the following documents have already produced that would be responsive to this request:</p> <ul style="list-style-type: none">• CLAIMANT0003320• CLAIMANT0003321• CLAIMANT0003322• CLAIMANT0003323• CLAIMANT0003339• CLAIMANT0003799• CLAIMANT0003800• CLAIMANT0003801 <p>With the exception of privileged materials excluded from production, which will be included in the corresponding privilege log, there are no other documents in Claimants' possession that meet the description of Respondent's Request.</p>

Reply:	<p>The Respondent observes that this request for documents is not limited to documents relied upon by Dr. Dippon.</p> <p>In view of the foregoing, the Respondent requests that the Claimants confirm that there are no responsive documents other than the ones identified in their objections.</p>
Tribunal’s decision:	<p>Granted. The Tribunal notes that Claimants allege that they have already produced responsive documents and that “[w]ith the exception of privileged materials excluded from production, there are no other documents in Claimants’ possession that meet the description of Respondent’s Request.” The Tribunal requests Claimants to confirm to Respondent and the Tribunal that: (i) they have undertaken good faith efforts to search for all documents that are responsive to this request and; (ii) that there are no other responsive documents different from those already produced.</p>

Request No.	14
Document / Category of Documents:	The documents relied on by Dr. Dippon in his expert report in support of the monthly subscription fees purportedly listed by the IFT.
Justifications:	<p>See general justification.</p> <p>The requested documents are relevant to the case and material to its outcome as they are necessary to challenge Dr. Dippon’s assertion that that Respondent’s expert made a series of errors by proposing “<i>monthly subscription fees that are significantly lower than those listed by the IFT</i>”.³³</p> <p>Dr. Dippon states that he is using this information as a reference for retail prices³⁴, but he does not provide the source, the period or the data used to make the aforementioned statement.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The monthly subscription fees purportedly listed by the IFT constitutes one of such documents. The requested documents are not in the possession, custody or control of the Respondent.</p>

³³ Dr. Dippon’s Reply Expert Report, ¶ 10; C-112.

³⁴ Dr. Dippon’s Reply Expert Report, ¶10; C-112.

	<p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because Dr. Dippon use them in his expert report.</p>
<p>Objections:</p>	<p>Claimants state that this request covers documents that are publicly available and in possession of Respondent.</p> <p>The specific reports and pages relied on by Dr. Dippon are already described in paragraph 139 of his reply report, and the details are contained in footnote 239.</p>
<p>Reply:</p>	<p>The Respondent observes that the documents relied upon by Dr. Dippon have not been identified. Thus, the Respondent has no means of determining whether they are in fact publicly available and within its possession.</p> <p>Furthermore, it is the Respondent’s position that the Claimants should produce the requested documents regardless of whether they are publicly available or not. Article 3.1 of the IBA Rules, which reflects international practice and, pursuant to paragraph 13.1 of Procedural Order No. 1 serve as guidance to this Tribunal in matters concerning evidence, state that “each Party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies, <u>including public Documents and those in the public domain</u>” [Emphasis added].</p> <p>In view of the foregoing, the Respondent requests that the Claimants either identify the documents relied upon by their expert, confirm that the documents cited in footnote 239 are the same documents to which Dr. Dippon refers at ¶10 of his Reply Report, or produce the documents.</p>
<p>Tribunal’s decision:</p>	<p>Granted. The Tribunal direct Claimants to either identify the documents relied upon by their expert, confirm that the documents cited in footnote 239 are the same documents to which Dr. Dippon refers at ¶10 of his Reply Report, or produce the documents.</p>

<p>Request No.</p>	<p>15</p>
<p>Document Category of Documents:</p>	<p>/ of The documents relied on by Dr. Dippon in his reply expert report related to the activation, equipment and technical support rates in Mexico.</p>
<p>Justifications:</p>	<p>See general justification.</p> <p>The requested documents are relevant to the case and material to its outcome as they are necessary to challenge Dr. Dippon’s assertion that Respondent’s expert made a series of errors by concluding that</p>

	<p>revenue from activation, equipment and technical support listed in Tele Fácil’s Concession Application should be excluded because operators allegedly no longer charge for this, “<i>despite IFT and other evidence to the contrary</i>”.³⁵</p> <p>This “IFT and other evidence”, was not included in the expert’s report despite the obligation to provide it pursuant to Article 5(2) of the IBA Rules (which apply in this case) pursuant to PO 1, section 20.3.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because Dr. Dippon use them in his expert report.</p>
Objections:	<p>Claimants state that this request covers documents that are publicly available and in possession of Respondent.</p> <p>The specific documents relied on by Dr. Dippon are already described in paragraph 141 of his reply report.</p> <p>There are no other documents in Claimants’ possession that meet the description of Respondent’s Request.</p>
Reply:	Same reply as in Request 14.
Tribunal’s decision:	Granted.

Request No.	16
Document / Category of Documents:	Tele Fácil’s audited financial statements for the years 2010 (<i>i.e.</i> year of its incorporation) until 2017. This request includes the notes to the financial statements.
Justifications:	<p>See general justification.</p> <p>In addition, Dr. Dippon, states that the operating and fixed costs of the DCF model “<i>were estimated base on expenses actually incurred by Tele Fácil</i>”.³⁶</p>

³⁵ Dr. Dippon’s Reply Expert Report, ¶ 10; C-112.

³⁶ Dr. Dippon’s Reply Expert Report, ¶ 147; C-112.

	<p>In his reply expert report Dr. Dippon quotes the <i>Reference Manual on Scientific Evidence</i>³⁷ which explains that financial statements would have the highest presumptive validity.</p> <p>The requested documents are relevant and material to the outcome of the case as they will assist the Respondent's expert to determine the precise amount of expenses incurred by of Tele Fácil during the relevant period and the amount invested, to be tendered as an alternative measure of damages in this case.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of Tele Fácil's business.</p>
Objections:	<p>Tele Fácil is not required under Mexican law to have its financial statements audited by a third party. As recognized under Tele Fácil's concession³⁸, Tele Fácil is only obliged to audit its financial statements when so provided by the Federal Fiscal Code. Tele Fácil does not fall within any of the events considered by Article 32-A of that Code, or under any other applicable law, that would require the company to have audited financial statements.</p> <p>Therefore, no documents that meet the description of Respondent's Request are in Claimants' possession.</p>
Reply:	<p>In view of the Claimants' statement that Tele Fácil does not have audited financial statements, the Respondent will accept non-audited financial statements.</p>
Tribunal's decision:	<p>Granted. The Tribunal requests Claimants to produce Tele Fácil's non-audited financial statements for the years 2010 (<i>i.e.</i> year of its incorporation) until 2017. This request includes the notes to such financial statements.</p>

Request No.	17
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³⁷ Dr. Dippon's Reply Expert Report, ¶ 13 and 58; C-112.

³⁸ C-080, at condition 15.2

Document / Category of Documents:	The Ofcom documents referred to by Dr. Dippon in his reply expert report.
Justifications:	<p>See general justification.</p> <p>Dr. Dippon’s reply expert report describes figures that were apparently taken from certain documents prepared by Ofcom. At footnote 24, Dr. Dippon explains that Ofcom conducted some studies in 2005 and 2013 named “<i>Review of BT’s network charge controls; Explanatory Statement and Notification of decisions on BT’s SMP status and charge controls in narrowband wholesale markets</i>” (18 August 2005) and “<i>Review of the fixed narrowband services markets; Statement on the proposed markets, market power determinations and remedies</i>” (26 September 2013).³⁹ However, these documents were not attached to his report.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The Ofcom documents fall into this category and should have been attached to his expert report.</p> <p>The requested documents are relevant to the case and material to its outcome because they are necessary to challenge the expert’s assertion that double transit is legal in the United Kingdom. The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because Dr. Dippon appears to have relied on them for the preparation of his report.</p>
Objections:	<p>Claimants state that this request covers documents that are publicly available. The documents may be found here:</p> <ul style="list-style-type: none"> • https://www.ofcom.org.uk/_data/assets/pdf_file/0010/30034/1-3.pdf • https://www.ofcom.org.uk/_data/assets/pdf_file/0014/50720/final_statement.pdf
Reply:	No reply is necessary, as the Claimants have provided the source of the requested documents.
Tribunal’s decision:	Considering that Respondent did not reply to this request, no decision from the Tribunal is required.

³⁹ Dr. Dippon’s Reply Expert Report, ¶29 footnotes 23 and 24; C-112.

Request No.	18
Document / Category of Documents:	The competitive tandem services model applied in the United States (in its original format) referred to at ¶ 35, of Dr. Dippon’s second expert report.
Justifications:	<p>See general justification.</p> <p>Moreover, the second report prepared by Dr. Dippon states that there is nothing unusual about Tele Fácil’s lines of business, including competitive tandem services. In support of this statement Dr. Dippon’s second expert report refers to Mr. Bello’s first witness statement but does not include the document referenced therein.⁴⁰</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The “proven model in the United States” referred to in Mr. Bello’s witness statement is one of such documents.</p> <p>The requested document is relevant to the case and material to its outcome because it will disprove the Expert’s assertion that the competitive tandem services are provided in the United States.</p> <p>The requested document is not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested document exists and is in the possession, custody or control of the Claimants, Mr. Bello and/or Dr. Dippon because Dr. Dippon relies on the Mr. Bello’s statement in his report for the proposition that competitive tandem services are provided in the United States.</p>
Objections:	<p>Claimants refute any suggestion or implication that Dr. Dippon made expert conclusions regarding the competitive tandem services line of business. Dr. Dippon cited to Mr. Bello’s first witness statement, without making any analysis or expert conclusion on the matter.</p> <p>Respondent misstates Dr. Dippon’s conclusions. As Dr. Dippon’s report clearly establishes in the same paragraph cited by Respondent in this Request No. 18, he says “There is nothing unusual about the three lines</p>

⁴⁰ Dr. Dippon’s Reply Expert Report, ¶35; C-112; Bello first witness expert, ¶71; C-004.

	<p>of business discussed in my report”⁴¹ (i.e., DID, international termination, and retail services).</p> <p>Therefore, there are no documents that meet the description of Respondent’s Request are in Claimants’ possession.</p> <p>The competitive tandem services line of business is part of Dr. Mariscal’s expert reports.</p>
Reply:	<p>The Respondent did not misstate Dr. Dippon’s Reply Expert Report. Paragraph 35 thereof states:</p> <p>“35. There is nothing unusual about the three lines of business discussed in my report. All three, international termination, DID, and retail services, are standard offerings in the United States and in other countries around the globe. International termination and retail services are services offered everywhere. Even Mr. Obradors lists Marcatel as offering international termination services. 35 Moreover, DID services are widespread. For example, FreeCC operated in 75 countries in July 2017. Mr. Obradors also lists Marcatel as offering a DID platform for FreeCC and AudioNow in Mexico. Thus, all three lines of business are currently offered in Mexico. <u>Regarding the fourth line of business, competitive tandem services, Mr. Bello explains, “[s]imilar practices already existed in the industry and I understand that this process would be very similar to the proven model in the United States.”</u>³⁸ [Emphasis added]</p> <p>Based on the above, the Respondent considers that this Request is justified, as Dr. Dippon relies on Mr. Bello’s statement regarding the “proven model in the United States”.</p>
Tribunal’s decision:	Denied. Respondent is requesting documents based on a general cross reference of a document that is not identified by Dr. Dippon.

Request No.	19
Document / Category of Documents:	The documents on which Dr. Dippon relies for the proposition that Telmex has a “history of misuse of the direct interconnection process”. ⁴²
Justifications:	See general justification.

⁴¹ Dr. Dippon’s Reply Expert Report, ¶ 35; C-112

⁴² Dr. Dippon’s Reply Expert Report, ¶ 46; C-112.

	<p>Dr. Dippon accuses Telmex of misusing the direct interconnection process, but fails to provide any evidence other than a claimant statement with anecdotal information to support his argument.⁴³ In order to assess the validity of Dr Dippon’s argument and how it could affect the claimants, the Respondent requests production of the evidence analysed by Dr. Dippon related to Telmex’s alleged practice of effectively been misusing the direct interconnection process.</p> <p>The requested documents are relevant to the case and material to its outcome as they are required to challenge Dr. Dippon’s argument related to Telmex’s alleged “<i>history of misuse of the direct interconnection process</i>”.⁴⁴</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because Dr. Dippon used them in his expert report in order to conclude about a historic misuse practiced by Telmex.</p>
<p>Objections:</p>	<p>Respondent cites Dr. Dippon’s quote of “history of misuse of the direct interconnection process” as contained in paragraph 46 of his expert report. In an attempt to accuse Dr. Dippon of making an argument with lack of support, Respondent ignores the immediate preceding paragraphs of Dr. Dippon’s report. All documents relied on by Dr. Dippon to come to the conclusion in paragraph 46 are properly referred to and cited in the same report from paragraphs 42 to 45.</p> <p>Such documents, either have already been produced by Claimants or are available in the public domain.</p>
<p>Reply:</p>	<p>It is the Respondent’s position that the Claimants should produce the requested documents regardless of whether they are publicly available or not. Article 3.1 of the IBA Rules, which reflects international practice and, pursuant to paragraph 13.1 of Procedural Order No. 1 serve as guidance to this Tribunal, state that “each Party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies, <u>including public Documents and those in the public domain</u>” [Emphasis added].</p>

⁴³ *Id.*

⁴⁴ *Id.*

	<p>Moreover, the Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall</i> contain <i>inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. The requested documents fall into this category.</p> <p>The Respondent also notes that paragraphs 42 to 45 quotes refer to three different sources (OECD, Review of Telecommunication Policy and Regulation in Mexico, 2012, C-017; Patrick Nixon, “CFC fines Telmex US\$52mn for refusing interconnection to Axtel,” BNamericas, February 7, 2013, and Telecompaper Americas, “America Móvil violates IFT’s dominance measures – Telefónica) related to this Request, which should be produced in accordance with Article 3.1 of the IBA Rules.</p>
Tribunal’s decision:	Granted. The Tribunal requests Claimants to identify all responsive documents that have already been produced pursuant to a previous and more general request.

Request No.	20
Document / Category of Documents:	Internal documents, Documents and Internal Records of Communications describing or providing evidence of Telmex’s historic misuse of the direct interconnection process.
Justifications:	<p>Dr. Dippon accuses Telmex of misusing the direct interconnection process, but fails to provide any evidence other than a claimant statement with anecdotal information to support his argument.⁴⁵ In order to assess the validity of Dr Dippon’s argument and how it could affect the claimants, the respondents would like to be provided with the evidence on which Claimants rely to argue that a recurrent practice performed by Telmex to misuse the direct interconnection process.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of Tele Fácil’s business considering Telmex’ relevance in the Mexican telecommunication market.</p>
Objections:	With the exception of privileged materials excluded from production, which will be included in the corresponding privilege log, there are no

⁴⁵ *Id.*

	other documents in Claimants' possession that meet the description of Respondent's Request.
Reply:	The Respondent takes note that Claimants are not in possession of any responsive documents other than the documents included in the privilege log.
Tribunal's decision:	Considering Respondent's Reply, no decision from the Tribunal is required.

Request No.	21
Document / Category of Documents:	Records of communications, agreements, proposals, MoU's, between GLCC and its "key customers" referred to at ¶ 54, of Dr. Dippon's second expert report and Nelson Witness Statement (C-001, ¶ 2).
Justifications:	<p>See general justification.</p> <p>Dr. Dippon's reply report states that Tele Fácil suffered "reputational harm created by not honoring the fact that GLCC had several key customers ready to enter to Mexico".⁴⁶ The Requested documents are relevant and material to the outcome of the case as they are needed to challenge the expert assertions and ascertain whether GLCC had entered into agreements with its key customers that could not be honoured on account of the measures at issue in this case.</p> <p>The Respondent will further observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia:</i> the "Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided". Dr. Dippon indirectly relies on these documents by citing to Mr. Nelson's witness statement but does not include the document referenced therein.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they are referred to in Dr. Dippon's second expert report and/or Mr. Nelson's witness statement.</p>
Objections:	Claimants refute any suggestion or implication that Dr. Dippon relied on "Records of communications, agreements, proposals, MoU's, between GLCC and its "key customers" for his statement that Tele Fácil suffered

⁴⁶ Dr. Dippon's Reply Expert Report, ¶53 and 54; C-112.

	<p>“reputational harm created by not honoring the fact that GLCC had several key customers ready to enter to Mexico.”</p> <p>As clearly indicated in Dr. Dippon’s expert report, he relied on the witness statement of Mr. Josh Nelson (C-001), Mr. Lowenthal (C-005) and Mr. Cernat (C-006).⁴⁷</p> <p>Therefore, there are no responsive documents to Respondent’s request.</p>
Reply:	The Respondent takes note that Claimants are not in possession of any responsive documents to this Request.
Tribunal’s decision:	Considering Respondent’s Reply, no decision from the Tribunal is required.

Request No.	22
Document / Category of Documents:	The Maxcom’ reports referred to at ¶ 63, footnotes 116 and 117 of Dr. Dippon second expert report.
Justifications:	<p>See general justification.</p> <p>Dr. Dippon’s second report cites to various annual reports of Maxcom Telecomunicaciones, S.A.B. de C.V, namely:</p> <ul style="list-style-type: none"> • Annual Report, 31 December 2014; • Annual Report, 31 December 2015; • Annual Report, 31 December 2016. <p>However, Dr. Dippon did not provide a copy of these reports.</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall</i> contain <i>inter alia</i>: the “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. Maxcom’s reports analysed and used by Dr. Dippon in his second expert report constitutes one of such documents.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p>

⁴⁷ Id.

	<p>The requested documents are relevant to the case and material to its outcome because they are necessary to properly evaluate and challenge assertions made in the expert report.</p> <p>The Respondent believes that the requested documents exists and are in the possession, custody or control of the Claimants because Mr. Dippon relied on them to prepare his second expert report.</p>
Objections:	<p>Claimants state that this request covers documents that are publicly available. The documents may be found here:</p> <p>http://ri.maxcom.com/en/reportes-anuales</p>
Reply:	<p>No reply is necessary, as the Claimants have provided the source of the requested documents.</p>
Tribunal's decision:	<p>Considering that Respondent did not reply to this request, no decision from the Tribunal is required.</p>

Request No.	23
Document / Category of Documents:	<p>The IFT publication (or publications) covering plans and rates for fixed-line services referred to at ¶ 139, of Dr. Dippon's reply expert report (where it reads: "[a] review of the IFT publication covering plans and rates for fixed-line services, in particular its voice and broadband double-play section, is shown in Table 15").</p>
Justifications:	<p>See general justification.</p> <p>The reply report prepared by Dr. Dippon refers to an unidentified IFT publication covering plans and rates for fixed-line services, which also serves as the source for "Table 15".</p> <p>The Respondent will observe that, pursuant to Article 5(2) of the IBA Rules (which apply in this case pursuant to PO 1, section 20.3 the expert reports <i>shall contain inter alia</i>: the "Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided". IFT publication covering plans and rates for fixed-line services analysed and used by Dr. Dippon in his second expert report constitutes one of such documents.</p> <p>The requested documents are relevant to the case and material to its outcome because they are necessary to properly evaluate and challenge assertions made in the expert report</p> <p>The requested document may be in the possession, custody or control of the Respondent, however, without any identification details, it is impossible for the Respondent to conclude whether or not it is in its possession.</p>

	<p>The Respondent believes that the requested document exists and is in the Claimants' possession, custody or control because it is referenced in Dr. Dippon's second expert report.</p>
Objections:	<p>Claimants note that this request covers documents that are publicly available. The documents may be found here:</p> <ul style="list-style-type: none">• http://www.ift.org.mx/usuarios-y-audiencias/reportes-de-informacion-comparable-de-planes-y-tarifas-de-servicios-de-telecomunicaciones <p>The specific reports and pages relied on by Dr. Dippon are described in footnote 239 of his reply report.</p>
Reply:	<p>No reply is necessary, as the Claimants have provided the source of the requested documents.</p>
Tribunal's decision:	<p>Considering that Respondent did not reply to this request, no decision from the Tribunal is required.</p>

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