

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Global Telecom Holding S.A.E.

v.

Canada

(ICSID Case No. ARB/16/16)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Georges Affaki, President of the Tribunal

Prof. Gary Born, Arbitrator

Prof. Vaughan Lowe, Arbitrator

Secretary of the Tribunal

Frauke Nitschke

13 June 2017

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Introduction

The first session of the Tribunal was held on April 21, 2017, at 2pm in Paris, 1pm in London, 8am in New York/Ottawa by telephone conference.

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

Participating in the conference were:

Members of the Tribunal

Prof. Georges Affaki, President of the Tribunal

Prof. Gary Born, Arbitrator

Prof. Vaughan Lowe, Arbitrator

ICSID Secretariat:

Frauke Nitschke, Secretary of the Tribunal

Participating on behalf of the Claimant:

Matthew Matule, Global Telecom Holding S.A.E.

Tim Burke, Global Telecom Holding S.A.E.

Penny Madden, QC, Gibson, Dunn & Crutcher LLP

Rahim Moloo, Gibson, Dunn & Crutcher LLP

Charline Yim, Gibson, Dunn & Crutcher LLP

Laura Corbin, Gibson, Dunn & Crutcher LLP

Participating on behalf of the Respondent:

Sylvie Tabet, Trade Law Bureau

Jean-François Hébert, Trade Law Bureau

Heather Squires, Trade Law Bureau

Adrian Johnston, Trade Law Bureau

Valantina Amalraj, Trade Law Bureau

Melissa Perrault, Trade Law Bureau

Marc-André Léveillé, Trade Law Bureau

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on March 10, 2017;
- The Draft Procedural Order circulated by the Tribunal Secretary on March 10, 2017;
and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on April 7, 2017 and April 14, 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The Procedural Timetable is attached as Annex A.

1. Governing Law and Applicable Arbitration Rules

Convention Article 44; FIPA Article XIII(7)

- 1.1. The governing law for this arbitration is the Agreement Between the Government of Canada and the Government of the Arab Republic of Egypt for the Promotion and Protection of Investments (the “FIPA”) and applicable rules of international law.
- 1.2. These proceedings shall be governed by the ICSID Arbitration Rules in force as of April 10, 2006.
- 1.3. If the Arbitration Rules and this Procedural Order do not address a specific procedural issue, the Tribunal shall, after consultation with the parties, determine the applicable procedure.
- 1.4. The Tribunal may seek guidance from, but shall not be bound by, the 2010 IBA Rules on the Taking of Evidence in International Arbitration, in particular with respect to:
 - (a) the exchange of documents (Article 3 of the IBA Rules, except that the confidentiality of documents shall be governed by a Confidentiality Order to be agreed by the parties);
 - (b) the presentation of evidence by fact and expert witnesses (Articles 3-4 of the IBA Rules);
 - (c) the conduct of the evidentiary hearing (Article 8 of the IBA Rules); and
 - (d) The admissibility and assessment of evidence (Article 9 of the IBA Rules).

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Arbitration Rule 6

- 2.1. The Tribunal was constituted on February 21, 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the

appointment of any Member of the Tribunal in respect of matters known to them on the date of this Procedural Order.

- 2.2. Each arbitrator is and shall remain at all times impartial and independent of the parties and the Tribunal will take into account the IBA Guidelines on Conflict of Interest, 2014. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations, and the accompanying statements of Professors Born and Lowe, were distributed to the parties by the ICSID Secretariat on August 19 and 25, 2016 and on February 21, 2017.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - (a) US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - (b) subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, unless the parties agree otherwise.

5. Decisions of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. The Tribunal will render all decisions, including the award, within a reasonable time period. If a decision or award has not been issued within three months after the final submission, the Tribunal will provide the parties with status updates every two months.
- 5.3. All requests with respect to procedural issues shall be made in writing except during a hearing, when such requests can be made orally. Unless otherwise agreed by the parties or ordered by the Tribunal, the other party shall have five business days, not including the day on which the request was made, to reply. No further submissions on a request shall be made by either party without the express authorization of the Tribunal in advance.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. Any Procedural Order of the Tribunal may, at the request of a party or at the Tribunal's own initiative, be varied if the circumstances so require.
- 5.6. The Tribunal's decisions on procedural matters may be communicated to the parties by the Tribunal Secretary by email.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Frauke Nitschke, Legal Counsel/Team Leader, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time. Lindsay Gastrell will serve as the Assistant Secretary of the Tribunal.

- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Frauke Nitschke
Lindsay Gastrell
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-2706
Fax: + 1 (202) 522-2615
Email: fnitschke@worldbank.org; lgastrell@worldbank.org
Paralegal email: Phoebe Ngan, sngan@worldbank.org

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

Frauke Nitschke
Lindsay Gastrell
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

8. Representation of the Parties
Arbitration Rule 18

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

For the Claimant

Ms. Penny Madden, QC
Ms. Bisma Grifat-Spackman
Gibson, Dunn & Crutcher LLP
Telephone House
2-4 Temple Avenue
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For the Respondent

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valantina.amalraj@international.gc.ca
melissa.perrault@international.gc.ca
marc-andre.levaille@international.gc.ca

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of February 22, 2017, ICSID requested that each party pay US\$100,000 to cover the initial costs of the proceeding. ICSID received the Claimant's payment on March 21, 2017 and the Respondent's payment on March 3, 2017.
- 9.3. ICSID shall request further advances as needed, in accordance with Administrative and Financial Regulation 14(3). Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. The unused balance held on deposit at the end of the arbitration shall be returned to the parties in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); FIPA Article XIII(6)(b)

- 10.1. Paris, France shall be the place of the proceeding.

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- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) shall be translated into English by the party producing the document.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
12. Routing of Communications
Administrative and Financial Regulation 24
- 12.1. All written communications in the case by the parties, the Tribunal, and the Tribunal Secretary, except for awards, shall be transmitted by email.
- 12.2. Each party shall address all communications, submissions and documents directly

and simultaneously to each member of the Tribunal, with a copy to the other party and the Secretary.

- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.5. The email addresses of the Members of the Tribunal are:

Prof. Georges Affaki
georges.affaki@affaki.fr

Prof. Gary Born
Gary.Born@wilmerhale.com

Prof. Vaughan Lowe
vlowe@essexcourt.net

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

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23-24

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal, the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of its factual exhibits and legal authorities,¹ and upload the pleading with the supporting witness statements, expert reports, factual exhibits and legal authorities to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. Within seven days following the electronic filing, the parties shall courier to ICSID:
- (a) one unbound hard copy in A4/Letter format² of the entire submission, including the pleading, witness statements, and expert reports, together with factual exhibits (but not legal authorities);
 - (b) one hard copy in A5 of the entire submission including the pleading, the witness statements, expert reports, and factual exhibits (but not legal authorities); and
 - (c) two USB drives or CD-ROMS with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.
- 13.3. Within seven days following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above (for the Claimant: to the

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

² The A4/Letter format is required for ICSID's archiving.

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attention of Ms. Penny Madden, QC and Mr. Rahim Moloo; and for the Respondent: to the attention of Ms. Sylvie Tabet and Ms. Melissa Perrault):

- (a) one hard copy in letter format of the entire submission including the pleading, the witness statements, expert reports, and exhibits (but not legal authorities); and
- (b) one USB drive or CD-ROM with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

13.4. Within seven days following the electronic filing, the parties shall courier to the Members of the Tribunal at the addresses indicated at §13.5 below:

- (a) For Prof. Affaki and Mr. Born: one hard copy in A5 format of the entire submission including the pleading, the witness statements, expert reports, exhibits, and legal authorities);
- (b) For Prof. Lowe, one hard copy in A5 format of the pleading only; and
- (c) For each Member of the Tribunal: one USB drive or CD-ROM with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

13.5. The addresses of the Tribunal Members are as follows:

Prof. Dr. Georges Affaki Affaki Avocats 91, rue du Faubourg Saint- Honoré 75008 Paris France Tel. +33 1 55 73 74 78	Prof. Gary Born Wilmer Cutler Pickering Hale and Dorr LLP 49 Park Lane London, W1K 1PS United Kingdom Tel. +44 20 7872 1000	Prof. Vaughan Lowe Essex Court Chambers 24 Lincoln's Inn Fields London, WC2A 3EG United Kingdom Tel. +44 20 7813 8000
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13.6. Legal authorities shall be Bates-stamped on each page with the specific exhibit number.

13.7. Electronic versions of a pleading, witness statements, expert reports, factual exhibits and legal authorities shall be submitted in OCR PDF or MS Word format and be text searchable and unlocked.

13.8. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.

13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.10. Submissions and correspondence shall be deemed timely if sent via e-mail by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

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

14.1. The number, sequence and date of pleadings, and the time intervals between pleadings, are set forth in the Procedural Calendar in Annex A to this Procedural Order No. 1.

15. Production of Documents

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

15.1. The parties shall file their document requests according to the schedule set out in Annex A to this Procedural Order No. 1.

15.2. Each request for documents will be set forth in a “Stern Schedule” (in Word format) (see Annex B), and shall precisely identify each document, or category of documents, sought and establish its relevance and materiality to the outcome of the case. Such a request shall not be copied to the Tribunal or the Tribunal Secretary. The Redfern Schedule will be comprised of five columns:

- (a) Identification of the documents or category of documents that have been requested;
- (b) Rationale for each request;
- (c) Objections by the objecting party to the production of the requested document(s);
- (d) Responses from the requesting party to the objecting party’s objections;
- (e) Decision of the Tribunal.

15.3. Each party shall state, in the Stern Schedule submitted to it by the other party, its responses or objections to the requested documents with reference to the objections listed in Article 9(2) of the IBA Rules. In the same Stern Schedule, the requesting party shall file its response in writing with respect to any outstanding disputes relating to such requests with the Tribunal and Tribunal Secretary, with a copy to the other Party (in Word format).

15.4. Documents shall be produced to the requesting party in electronic format only by uploading them to a section of the file sharing platform that will be created by the ICSID Secretariat for this purpose (and to which only the parties will have access)

with each individual document clearly labelled with a unique identifying number and an index of the produced documents.

15.5. The Tribunal shall rule promptly upon any objection to the production of documents or categories of documents.

15.6. Documents so disclosed shall not be considered part of the record unless and until one of the parties submits them in evidence to the Tribunal pursuant to §16.

16. Submission of Documents

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

16.1. The Procedural Timetable in Annex A sets out the applicable dates that shall govern the exchanges and filing of written submissions in this proceeding.

16.2. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

16.3. The documents shall be submitted in the manner and form set forth in §13 above.

16.4. Except with the leave of the Tribunal or the consent of the other party, the parties may only include with their Reply and Rejoinder submissions evidence (including witness or expert testimony) responding to or rebutting matters raised by the other Party's immediately preceding written submission or documents produced in the period following that submission.

16.5. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

(a) Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

(b) If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.6. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.7. The documents shall be submitted in the following form:

- (a) Factual exhibits and legal authorities shall be numbered consecutively throughout these proceedings. To the extent possible, the parties shall submit all factual exhibits and legal authorities in chronological or other appropriate order, together with an index describing each of the factual exhibits and legal authorities by their number, date, and other identifying information, as appropriate. This index of factual exhibits and legal authorities shall be included in the electronic filing of submissions in accordance with §13.1 above.
 - (b) The number of each document submitted by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each document submitted by Respondent shall be preceded by the letter “R-” for exhibits and “RL-” for legal authorities.
 - (c) Each factual exhibit and legal authority shall be Bates-stamped on each page with the specific factual exhibit or legal authority number (both in soft copy and hard copy) and hard copies shall have a divider with the identification number on the tab.
 - (d) Each factual exhibit and legal authority shall be saved and submitted as an individual file.
 - (e) Copies of factual exhibits shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.8. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements. However, any factual exhibits or legal authorities that are submitted with witness statements (or expert reports) shall also comply with the requirements set forth in §§13.6 and 17.7.
- 16.9. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the factual exhibit or legal authority from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
- 16.10. The parties shall either submit all documents to the Tribunal in complete form or indicate the respects in which any document is incomplete.

17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Any person may present evidence as a witness, including a party or a party's officer, employee, or other representative.
- 17.2. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.3. The witness statements shall be numbered separately from other documents and include each witness' surname (*e.g.* "CWS-[surname of witness]" for the Claimant's witness statements and "RWS-[surname of witness]" for the Respondent's witness statements). Where a witness submits more than one witness statement, his or her subsequent witness statements shall be numbered accordingly (*e.g.* "CWS-[surname of witness]-2" or "RWS-[surname of witness]-2").
- 17.4. Each witness statement shall state: (1) the name and address of the witness; (2) his or her relationship to, and interest in, any of the parties in this arbitration; and (3) the substance of the evidence that the party will present through the testimony of the witness at the hearing. Each witness statement shall be signed by the witness, providing the date and place of signature.
- 17.5. Each party may retain and submit the evidence of one or more experts to the Tribunal. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' written submissions, in which case reference to such exhibits shall be sufficient.
- 17.6. The expert reports shall be numbered separately from other documents and include each expert's surname (*e.g.* "CER-[surname of witness]" for the Claimant's expert reports and "RER-[surname of witness]" for the Respondent's expert reports). Where an expert submits more than one expert report, his or her subsequent expert reports shall be numbered accordingly (*e.g.* "CER-[surname of witness]-2" or "RER-[surname of witness]-2").
- 17.7. Each expert report shall include the information listed in §17.4 above, as well as a statement of qualifications of the expert in the claimed area of expertise. Each expert report shall attach a current curriculum vitae evidencing such qualifications.
- 17.8. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.5).
- 17.9. Each witness statement and expert report shall be signed and dated by the witness or expert.

18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

- 18.1. On a date to be determined by the Tribunal after consulting the parties, which shall not be less than six weeks before any hearing, each party shall notify simultaneously the other party, with a copy to the Tribunal, which of the witnesses and experts of the opposing party it wishes to cross-examine at the hearing.
- 18.2. After receiving the notifications in §18.1, the Tribunal will identify which of the witnesses and experts not called for cross-examination it wishes to appear at the hearing, if any. Only witnesses and experts that are called to be cross-examined by the opposing party, or who are directed to appear by the Tribunal, shall testify at the hearing. Notwithstanding the above, at the request of a party (not received later than one week after the Tribunal's identification of witnesses and experts), the Tribunal may allow a witness or expert offered by that party but not called to be cross-examined by the other party, or directed by the Tribunal to appear, to testify at the hearing. In this event, the parties shall be entitled to subsequent examinations of the witness or expert, in accordance with the procedure outlined in §§18.9-18.10.
- 18.3. Each party shall be responsible for ensuring the attendance of its own witnesses and experts at the applicable hearing, except when the other party has waived cross-examination of a witness or expert, the Tribunal does not direct his or her appearance, and the party decides not to call the witness or expert.
- 18.4. Each party shall cover the costs of appearance of its own witnesses and experts (except with respect to interpretation, addressed in §11 above). The Tribunal will decide upon the appropriate allocation of such costs in the award or at the time the arbitration is concluded.
- 18.5. If a witness or expert cannot appear during the scheduled dates or without notice fails to appear at a hearing, the Tribunal may, at its discretion, summon the witness to appear a second time, if it is satisfied that: (1) there was a compelling reason for the witness' or experts' first failure to appear; (2) the testimony of the witness or expert is relevant to the adjudication of the dispute; and (3) providing a second opportunity for the witness or expert to appear will not unduly delay the proceeding.
- 18.6. The Tribunal may consider the witness statement of a witness or the expert report of an expert who provides a valid reason for failing to appear at a hearing, having regard to all the surrounding circumstances, including the fact that the witness or expert was not subject to cross-examination. A witness or expert who is not called for cross-examination has a valid reason not to appear. The Tribunal may decline to consider the witness statement of a witness or an expert report of an expert who fails to appear and does not provide a valid reason.

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- 18.7. Witnesses or experts shall be examined in person except in exceptional circumstances as determined by the Tribunal, in which case examination by video-conference may be permitted.
- 18.8. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).
- 18.9. At any hearing the examination of each witness shall proceed as follows:
- (a) the party presenting the witness may briefly examine the witness for the purpose of introducing the witness, correcting, if necessary, any errors in the witness statement and addressing matters arising after the witness statement was given, if any;
 - (b) the opposing party may then cross-examine the witness;
 - (c) the party presenting the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination. At the discretion of the Tribunal, the opposing party may re-cross examine the witness, with the re-cross examination limited to the witness's testimony on re-examination; and;
 - (d) the Tribunal may examine the witness at any time, either before, during or after examination by one of the parties.
- 18.10. At any hearing the examination of an expert shall proceed in the manner set forth for fact witnesses in §18.9, except that §18.9(a) may, at the request of the presenting party, be replaced with a presentation by the expert for a duration to be determined at the Pre-Hearing Organizational Meeting by the Tribunal in consultation with the parties.
- 18.11. During the Pre-Hearing Organizational Meeting, the Tribunal in consultation with the parties shall determine which witnesses may be present in the hearing room during oral statements and testimony, and the order in which such witnesses shall be examined.
- 18.12. Unless agreed otherwise, a fact witness shall not be present in the hearing room during the opening statement, the hearing of oral testimony, nor shall he or she read any transcript of any oral testimony prior to his or her examination. This limitation does not apply to experts or to a fact witness if that fact witness is a party representative.
- 18.13. The party representative means the individual designated by a party to act as its agent and give instructions to counsel at the hearing.
- 18.14. It shall not be improper for counsel to meet fact witnesses and potential fact

witnesses to establish the facts, prepare the witness statements, and prepare for examinations. Once direct examination begins, a fact witness shall remain sequestered from counsel until his or her testimony is complete.

18.15. A decision by a party not to call a fact witness to appear for testimony at a hearing shall not be considered to reflect an agreement as to the correctness of the content of the fact witness statement.

19. Pre-Hearing Organizational Meetings
Arbitration Rules 13 and 21

19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties by telephone or videoconference between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings
Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing shall be held at a place to be determined in accordance with §10 above.

20.3. The date of the hearing is set forth in the Procedural Timetable in Annex A.

20.4. The hearing shall not be made public without the Claimant's agreement.

20.5. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.6. Allocation of time at the hearing shall be agreed upon by the parties or, alternatively, decided by the Tribunal in consultation with the parties after the Pre-Hearing Organizational Meeting.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

21.2. Verbatim transcript(s) in the procedural language shall be made of any hearing and

session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

- 21.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 22.1. At the hearing, after consulting with the parties and taking into account their views (particularly in respect of any cost implications), the Tribunal shall decide whether it believes it to be necessary for the Parties to file Post-Hearing Memorials.

- 22.2. Each party will submit its Statement of Costs within 4 weeks after the hearing or the final exchange of Post-Hearing Memorials (if any).

23. Confidentiality and Publication

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

- 23.1. The Tribunal’s awards, decisions and orders shall be published on the ICSID website, subject to the redaction of confidential information under a Confidentiality Order to be agreed by the parties.

- 23.2. All other documents shall also be subject to redaction in accordance with a Confidentiality Order before publication by either party.

24. Disposal of Record

- 24.1. Three months after the Tribunal has notified the award to the parties, the arbitrators shall be at liberty to dispose of the record of the arbitration.

On behalf of the Tribunal,

[signed]

Prof. Georges Affaki
President of the Tribunal
Date: 13 June 2016

Annex A: Procedural Timetable

	Procedural Step	Time Period	Date
A.	Claimant's Memorial on the Merits and Damages	--	September 29, 2017
B.	Canada's Memorial on Jurisdiction and Admissibility & Request for Bifurcation (if any)	47 days	November 15, 2017
C.	Claimant's Response to (any) Request for Bifurcation	2 weeks	November 29, 2017
D.	Tribunal's Decision on Bifurcation (if necessary)	2 weeks (approx.)	December 13, 2017 (approx.)

The following timetable will apply if the Tribunal decides not to bifurcate the proceeding:

	Procedural Step	Time Period	Date
E.	Canada's Counter-Memorial on the Merits and Damages	103 days after B	February 26, 2018
F.	Parties' Requests for Document Production	30 days	March 28, 2018
G.	Parties' Objections to Requests for Document Production (if any)	14 days	April 11, 2018
H.	Parties' Responses to Objections to Produce Documents (if any)	14 days	April 25, 2018
I.	Application to the Tribunal for Order on Production of Documents (if necessary)	9 days	May 4, 2018
J.	Tribunal's Decision on Document Requests (if necessary)	14 days (approx.)	May 18, 2018 (approx.)
K.	Production of Documents to Requests for Document Production not objected to by the Parties	63 days after F	May 30, 2018
L.	Production of Documents as ordered by the Tribunal	60 days after J	July 17, 2018

Procedural Order No. 1

	Procedural Step	Time Period	Date
M.	Claimant's Reply on Merits and Damages & Counter-Memorial on Jurisdiction and Admissibility	59 days after L	September 14, 2018
N.	Canada's Rejoinder on Merits and Damages & Reply on Jurisdiction and Admissibility	90 days after M	December 13, 2018
O.	Claimant's application for leave to file a Rejoinder on Jurisdiction and Admissibility, on the grounds that new jurisdictional objections or new arguments were raised in Canada's Reply on Jurisdiction and Admissibility (if necessary)	1 week	December 20, 2018
P.	Tribunal's decision on Claimant's application for leave to file a Rejoinder on Jurisdiction and Admissibility, if necessary	3 weeks (approx.)	January 10, 2019 (approx.)
Q.	Claimant's Rejoinder on Jurisdiction and Admissibility, if leave is requested and granted	29 days	February 8, 2019
R.	Pre-Hearing Conference Call	At least 6 weeks before S	TBD
S.	Oral Hearing on Jurisdiction, Admissibility, Merits and Damages	--	April 1-14, 2019 (2 weeks)
T.	Tribunal's Award	--	TBD

The following timetable will apply if the Tribunal decides to bifurcate the proceeding:

	Procedural Step	Time Period	Date
Preliminary Objections Phase			
E.	Claimant's Counter-Memorial on Jurisdiction and Admissibility	63 days after D	February 14, 2018
F.	Parties' Requests for Document Production (with respect to jurisdictional objections)	30 days after E	March 16, 2018
G.	Parties' Objections to Requests for Document Production (if any)	14 days	March 30, 2018

Procedural Order No. 1

	Procedural Step	Time Period	Date
H.	Parties' Responses to Objections to Produce Documents (if any)	14 days	April 13, 2018
I.	Application to the Tribunal for Order on Production of Documents (if necessary)	7 days	April 20, 2018
J.	Tribunal's Decision on Document Requests (if necessary)	14 days (approx.)	May 4, 2018 (approx.)
K.	Parties' Production of Documents	31 days after F (no objections) 31 days after J (if objections)	April 16, 2018 or June 4, 2018
L.	Canada's Reply on Jurisdiction and Admissibility	60 days after K	June 15, 2018 or August 3, 2018
M.	Claimant's Rejoinder on Jurisdiction and Admissibility	60 days	August 14, 2018 or October 2, 2018
N.	Prehearing Conference Call	at least 4 weeks before O	TBD
O.	Oral Hearing on Canada's Jurisdictional and Admissibility Objections	--	November 21-23, 2018 (2-3 days)
P.	Tribunal's Decision on Jurisdiction / Award	--	TBD
Merits Phase (if any)			
Q.	Canada's Counter-Memorial on the Merits and Damages	90 days after P	TBD
R.	Parties' Requests for Document Production	30 days	TBD
S.	Parties' Objections to Requests for Document Production (if any)	14 days	TBD
T.	Parties' Responses to Objections to Produce Documents (if any)	14 days	TBD

Procedural Order No. 1

	Procedural Step	Time Period	Date
U.	Application to the Tribunal for Order on Production of Documents (if necessary)	7 days	TBD
V.	Tribunal's Decision on Document Requests (if necessary)	14 days (approx.)	TBD
W.	Production of Documents to Requests for Document Production not objected to by the Parties	60 days after R	TBD
X.	Production of Documents as ordered by the Tribunal	60 days after V	TBD
Y.	Claimant's Reply on Merits and Damages	60 days	TBD
Z.	Canada's Rejoinder on Merits and Damages	60 days	TBD
AA.	Pre-Hearing Conference Call	at least 6 weeks before BB	TBD
BB.	Oral Hearing on Merits and Damages	--	TBD
CC.	Tribunal's Award	--	TBD

Annex B: Stern Schedule

Redfern/Stern Schedule

Document Request No	
A. Documents or category of documents requested	
B. Relevance and materiality: (1) para ref to submissions (2) comments	
C. Summary of objections by disputing Party to production of requested documents	
D. Reply	
E. Decision of the Tribunal	