

**THE ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE**

**GARDABANI HOLDINGS B.V.
INTER RAO UES PJSC
TELASI, JSC**

Claimants

v.

**GEORGIA
MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT OF GEORGIA
STATE SERVICE BUREAU LTD**

Respondents

SCC Arbitration V2018/039,
administered by ICSID as ICSID Case No. ADM/18/1

SECOND PARTIAL AWARD ON DAMAGES

Members of the Tribunal

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Professor Stanimir Alexandrov, Arbitrator
Professor Zachary Douglas QC, Arbitrator

ICSID Legal Counsel

Mr. Alex Kaplan

Date of dispatch to the Parties: 23 November 2021

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LIST OF ABBREVIATIONS

Abbreviation	Definition
2006 Energy Policy	Resolution of Georgia’s Parliament on the main directions of Georgia’s energy sector policy; in order to attract investments and development competition, electricity distribution companies had to be privatized, and provided different types of tariffs to protect consumers from monopolistic prices and permit long-term sustainable growth (RL-0006)
2006 Tariff Resolution	15 May 2006 NERC Resolution No. 18 fixed Telasi’s WAPT at 4.303 tetri/kWh and its average Distribution Tariff at 7.89 tetri/kWh, effective 1 June 2006 (R-0014)
2007 Memorandum	20 June 2007 agreement between Inter RAO and the Government; [REDACTED]
2010 Memorandum	1 October 2010 non-binding memorandum of understanding between Inter RAO and the Government; [REDACTED]
2011 Memorandum	31 March 2011 Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, between Inter RAO and the Government [REDACTED] <i>see also</i> Khrami SPA, 12 April 2011 (C-0016)
2012 Temporary Memorandum	26 December 2012 transitional memorandum between Inter RAO and the Government; [REDACTED] (C-0030)
2013 Memorandum	31 March 2013 agreement between Georgia, the Partnership Fund JSC (a Georgian state-owned company), Inter RAO, Telasi, and the Khrami Companies, [REDACTED] (C-0034 / R-0028)
2011 Methodology	8 June 2011 NERC’s Methodology for Electricity Tariff Calculation (CL-0081)

Abbreviation	Definition
2014 Amended Methodology	10 August 2017 NERC Resolution No. 20 substantially amended the 2014 Methodology
2014 Methodology	30 July 2014 NERC's new tariff methodology for Distribution Tariffs and Consumer Tariffs; did not specifically exempt companies that had specific tariff agreements (CL-0084)
AES	AES Mtkvari LLC; local Georgian thermal power generation company, acquired by Inter RAO in 2003
CEO	Chief Executive Officer
Claimants	Collectively, SCC Arbitration Claimants and ICSID Arbitration Claimants
Consumer Tariffs	Maximum rates that a distribution company (in this case, Telasi) can charge to its customers, and which form the revenue component of a distribution company's business; comprise the sum of the WAPT and the Distribution Tariff
COPS (also known as ESCO)	Commercial Operator of Power System / Electricity System Commercial Operator; Georgian State-owned company responsible for operating the electricity market
Cost-Plus	Tariff methodology in force [REDACTED] until the 2011 Methodology; covered costs and a reasonable rate of return
CPI	Consumer Price Index; average annual inflation rate published by the National Statistics Office of Georgia
DCF	Discounted cash flow
Discounting Rate	Rate at which free cash flow to the firm (FCFF) is discounted
Distribution Tariff or Distribution Margin	Computed for different voltage levels as the distributor's forecast per unit cost, calculated on a regulatory basis; not rates charged to customers, but rather they represent a distribution company's margin on a tetri per kWh basis
EBITDA	Earnings before interest, tax, depreciations and amortization are paid
EC	European Commission
Electricity Balance	Before the start of each year, the GSE prepares, and the MOE approves, the electricity balance; includes a general forecast of the output of each generating plan, an estimate of electricity imports and exports, and a forecast of total electricity sales by each distribution company (CL-0073, Article 23.1)
Energopro	Energopro is one of Georgia's three electricity distributors, along with Telasi and Kakheti

Abbreviation	Definition
Enguri	Enguri HPP LLC, along with Vardnili, are the two largest HPPs generation companies in Georgia and are State-owned
ESCO (also known as “COPS”)	The Electricity System Commercial Operator (also known as the Commercial Operator of Power System); State-owned balancer of electricity on the market by trading the volume of electricity delivered into the network by generators and importers which is not purchased under direct agreements with distributors
EU	European Union
FCFE	Free cash flow to equity is used to determine losses at the shareholder level, and measures how much cash is available to equity-holders of a company after changes in net borrowings and interest is paid
FCFF	Free cash flow to the firm is used to determine losses at the local level, and measures the financial performance of a company by expressing the amount of cash generated by a firm after considering expenses, taxes, and changes in net working capital and investments
[REDACTED]	[REDACTED]
Gardabani	Gardabani Holdings B.V.
GACG	General Administrative Code of Georgia (RL-0005)
GCC	Georgian Civil Code (RL-0009)
Generation Tariffs	The rates that can be charged by each company for the sale of the energy it generates
GEL	Georgian national currency Lari
[REDACTED]	[REDACTED]
The Government or Georgia	Georgia (collectively the Respondents: Georgia, Ministry of Economy, and State Service)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
GSE	Georgian State Electrosystem; State-owned entity which has been designated as the transmission system operator (TSO)
[REDACTED]	[REDACTED]

Abbreviation	Definition
NERC Resolution No. 3	3 April 2013 resolution which amended Resolution No. 33 (2008) to include the new tariffs applicable to Telasi from 1 April 2013 onwards; implemented the tariffs in the 2013 Memorandum (CL-0083)
NERC Resolution No. 5	7 April 2011 (CL-0080); implemented the tariffs in the 2011 Memorandum and Annex 1 of the Khrami SPA
NERC Resolution No. 23	27 December 2012 (CL-0082, initially mislabelled by the Claimants as C-0082); implemented the tariffs in the 2012 Temporary Memorandum
NERC Resolution No. 33	NERC Resolution No. 33 “On Adoption of Electricity (Capacity) Rates”, 4 December 2008 (CL-0078); implemented the tariffs in the 2007 Memorandum; updated 3 April 2013 (CL-0083)
NERC Resolution No. 48	Prescribes the Telasi Consumer Tariffs for 2018-2020 (CL-0091)
[REDACTED]	[REDACTED]
NPV	Net present value
NWC	Net working capital
OB	Opening balance – data at the beginning of the period
OPEX	Operational Expenses: expenses related to the operation and maintenance of the electricity distribution grid, and other current expenses related to the regulated activity (2014 Methodology, CL-0084)
Partnership Fund JSC	Georgian State-owned company, owns 24.64% of Telasi
Purchase Portfolio	Allocation of energy purchases from different generators to a distributor; each distributor’s purchase portfolio includes a combination of more and less expensive sources of energy for the year; NERC’s Annual Energy Plan for each distribution company identifies, for each month, the generation companies from which a particular distribution company must purchase electricity, and in what volumes
RAB	Regulatory Asset Base (2014 Methodology, CL-0084)
RCB	Regulatory Cost Base (2014 Methodology, CL-0084)
[REDACTED]	[REDACTED]

Abbreviation	Definition
[REDACTED]	[REDACTED]
SCC Claimants	Collectively Inter RAO, Telasi and Gardabani
Scenario 1 (But-For) (Claimants/Peer)	Takes into account Telasi’s Consumer Tariffs and Khrami Companies’ Generation Tariffs, calculated in accordance with 2013 Memorandum for both the Historical and Forecast Periods
Scenario 2 (Actual) (Claimants/Peer)	Takes into account Telasi’s actual Consumer Tariffs determined by NERC in Historical Period; for Forecast Period, takes into account Telasi’s Consumer Tariffs calculated in accordance with the 2014 Amended Methodology
Silk Road	Silk Road Holdings B.V.
State Service Bureau	Georgian state-owned entity; Respondent
[REDACTED]	[REDACTED]
Telasi	JSC Telasi, Inter RAO’s Georgian distribution company; established in 1995 as a Georgian joint stock company, and owned by Georgia until 1998; 75% bought by AES Silk Road Holdings BV in 1998
Telasi SPA	21 December 1998 share purchase agreement through which AES Silk Road Holdings BV acquired 75% of Telasi (C-0001)
Tetri	1 Tetri is equal to 0.01 GEL
[REDACTED]	[REDACTED]
TOTEX	Allowed distribution revenues
TPPs	Gas-fired thermal power plants
TSO	Transmission system operator
Twinning Initiative	Since 2012, and in parallel with the MOE and Inter RAO’s negotiations concerning the 2013 Memorandum, NERC was in the process of updating its tariff regime to bring it in line with the best practices of other EU Member States, pursuant to funding provided by the EC’s “Twinning Initiative” for inter-EU knowledge sharing and administrative reform, which culminated in the adoption of the 2014 Methodology

Abbreviation	Definition
[REDACTED]	[REDACTED]
USD	United States Dollar
Vardnili	Vardnili HPP LLC, along with Enguri, are the two largest HPP generation companies in Georgia and are state-owned
WACC	Weighted Average Cost of Capital
WAPT	Weighted Average Purchase Tariff

DRAMATIS PERSONAE

Messrs Manuel A. Abdala & Julian Delamer	The Claimants' regulatory experts on the issues of the regulatory changes in the allocation of Telasi's electricity purchases; submitted three expert reports: First Abdala & Delamer Expert Report, dated 27 June 2018 ("Abdala & Delamer I"); Second Abdala & Delamer Expert Report, dated 1 March 2019 ("Abdala & Delamer II"); Third Abdala & Delamer Expert Report, dated 16 September 2019 ("Abdala & Delamer III")
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

<p>Dr. Boaz Moselle</p>	<p>The Respondents’ expert on damages; submitted four expert reports: First Expert Report, 23 November 2018 (“Moselle I”); Second Expert Report, 13 June 2019 (“Moselle II”); Third Expert Report, 22 November 2019 (“Moselle III”); Fourth Expert Report, 10 January 2020 (“Moselle IV”)</p>
<p>Mr. Michael Peer</p>	<p>The Claimants’ expert on damages; submitted four expert reports: First Expert Report, 27 June 2018 (“Peer I”); Second Expert Report, 1 March 2019 (“Peer II”); Third Expert Report, 6 September 2019 (“Peer III”); Fourth Expert Report, 19 December 2019 (“Peer IV”)</p>
<p>Dr. Boaz Moselle and Mr. Michael Peer</p>	<p>Dr. Boaz Moselle and Mr. Michael Peer submitted a joint expert report on 3 October 2019 (“JER1”) and a second joint expert report on 21 June 2021 (“JER2”).</p>
<p>Dr. Paata Turava</p>	<p>The Respondents’ Georgian law expert, particularly on the legal nature of the two contracts at issue in the Arbitration, the principles of contractual interpretation applicable to public law contracts, and the entitlement to lost profits under Georgian law; submitted two expert reports, dated 20 November 2018 and 12 June 2019</p>

	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

I. INTRODUCTION

1. This second partial award on damages addresses the quantification of damages flowing from the Tribunal's previous awards in this matter: the Partial Award in on Liability, dated 19 April 2021 (the "**Partial Award on Liability**") and the Partial Award on Damages, dated 30 July 2021 (the "**First Partial Award on Damages**").

2. As stated in the previous Partial Awards, this arbitration concerns a dispute submitted under the Rules of the Stockholm Chamber of Commerce ("**SCC**"), pursuant to the terms of the arbitration agreements contained in the Memorandum on the Development of Cooperation in the Electric Sector and the Implementation of Previous Agreements between the Government of Georgia, the Partnership Fund JSC (a Georgian state-owned entity), Inter RAO UES PJSC, Telasi JSC, the Khrami Companies, Khrami HPP-1 JSC and Khrami HPP-2 JSC, and Mtkvari Energy LLC (owned by Inter RAO) (the "**2013 Memorandum**")¹ and a share purchase agreement between the Government of Georgia, the Ministry of Economy and Sustainable Development of Georgia, the State Service Bureau Ltd. and Gardabani Holdings B.V.(the "**Khrami SPA**").²

¹ C-0034 (Claimants' Translation) / R-0028 (Respondents' Translation), Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements between (1) Government of Georgia, (2) Partnership Fund JSC and (3) OJSC "INTER RAO UES", (4) Telasi JSC (5) Mtkvari Energy LLC, (6) Khrami HPP-1 JSC, and (7) Khrami HPP-2 JSC dated 31 March 2013 ("**2013 Memorandum**"), Clause 9, "Arbitration Section", which provides at Clause 9.3 that "[a]ny dispute ... shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce."

² C-0016, Sale and Purchase Agreement on 100% of Shares of the Joint Stock Company "Khrami HPP-1" and 100% of Shares of the Joint Stock Company "Khrami HPP-2" between (1) Government of Georgia, (2) Ministry of Economy and Sustainable Development of Georgia, (3) State Service Bureau LTD and (4) COMPANY "Gardabani Holdings B.V." dated 12 April 2011 ("**Khrami SPA**"), Clause 8, "Dispute Settlement", which provides at Clause 8.4 that "[a]ny dispute ... shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce...."

3. This is one of two arbitrations whose procedure the Parties have agreed to coordinate. This arbitration is referred to as the “**SCC Arbitration**”.

4. The other arbitration concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**”) under the Agreement on Encouragement and Reciprocal Protection of Investments between Georgia and the Kingdom of the Netherlands, which entered into force on 1 April 1999 (the “**BIT**” or “**Treaty**”), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “**ICSID Convention**”). That arbitration is referred to as the “**ICSID Arbitration**”.

5. As discussed later in this Award, the Claimants’ claim for damages and the Respondents’ counterclaim overlap with their respective claims in the ICSID Arbitration.

II. THE PARTIES

6. The Claimants in this arbitration are PJSC Inter RAO UES (“**Inter RAO**”), a public joint stock company incorporated under the laws of Russia;³ Gardabani Holding BV (“**Gardabani**”), a private limited liability company established under the laws of the Netherlands;⁴ and JSC Telasi (“**Telasi**”), a joint stock electricity distribution company incorporated in Georgia.⁵

7. Gardabani owns 100% of Khrami HPP-1 JSC (“**Khrami-1**”) and JSC Khrami HPP-2 JSC (“**Khrami-2**”) (collectively, the “**Khrami Companies**”), which are electricity generation

³ Inter RAO’s address is: 27, Bolshaya Pirogovskaya Street, Building 2, 119435, Moscow, Russia; Netherlands Chamber of Commerce Business Register extract, C-0112. Inter RAO owns an indirect 100% interest in each of Gardabani Holdings BV (“**Gardabani**”) and Silk Road Holding BV (“**Silk Road**”).

⁴ Gardabani’s address is: Strawinskylaan 655, 1077XX Amsterdam; The Netherlands Chamber of Commerce Business Register extract, C-0110.

⁵ Telasi’s address under the 2013 Memorandum is: 3 Vani Street, Tbilisi 0119, Georgia.

companies incorporated in Georgia. Telasi is a subsidiary of Silk Road Holdings BV, which owns 75.11% of Telasi's stock. Gardabani and Silk Road are subsidiaries of Inter RAO.

8. The Respondents in this arbitration are the Government of Georgia (the "**Government**"); the Georgian Ministry of Economy and Sustainable Development of Georgia ("**Ministry of Economy**" or the "**MOE**"); and the State Service Bureau Ltd ("**SSB**"), a Georgian state-owned entity.⁶

9. The Parties in the ICSID Arbitration are Gardabani and Silk Road, as Claimants, and Georgia, as the Respondent.

III. PROCEDURAL HISTORY OF THE PROCEEDINGS

10. The procedural history of these proceedings through 30 July 2021 is set out in the Partial Award on Liability and the First Partial Award on Damages.

11. In the First Partial Award on Damages, the Tribunal decided a number of issues relating to the calculation of damages, requested that the Parties' damages experts recalculate damages on the basis of those findings and produce a new joint expert report on damages, and deferred the Parties' claims for interest and costs to the Final Award.

12. The procedural developments since 30 July 2021 are summarized as follows:

13. On 4 August 2021, the ICSID Secretariat wrote to the Parties to provide the Tribunal's directions regarding the calculations of damages with respect to losses suffered by Telasi and the Khrami Companies for three relevant periods of time.

⁶ Georgia's official address and its address for receipt of notices under the 2013 Memorandum is: 7 Ingorokva Street, Tbilisi 0114, Georgia. The MOE's legal address set out in the Khrami SPA is 12 Chanturia St., Tbilisi 0108, Georgia. The SSB's registered address set out in the Khrami SPA is 12 Chanturia St., Tbilisi 0108, Georgia.

14. On 3 September 2021, pursuant to the Tribunal's directions, the Parties advised that they would provide the Tribunal with an updated joint expert report with revised calculations for the losses to Telasi [REDACTED] and the losses to the Khrami Companies by 25 October 2021. On 7 September 2021, the Tribunal confirmed the Parties' proposed deadline for the submission of the new updated joint expert report ("JER3").

15. On 10 September 2021 the Respondents wrote to the ICSID Secretariat that the Parties jointly requested an extension of the deadline the Tribunal had set in its directions for providing an update [REDACTED] until 24 September 2021. This request was confirmed by the Claimants on the following day. On 12 September 2021, the Tribunal accepted the requested extension of the deadline.

16. On 24 September 2021, the Parties jointly requested a further extension of the deadline for the update [REDACTED] until 28 September 2021. On the same date, the Tribunal granted the Parties' request for an extension.

17. On 28 September 2021, the Parties advised the Tribunal that they would require additional time to provide an update [REDACTED] [REDACTED]. On 29 September 2021, the Tribunal confirmed its acceptance of the Parties' proposal to provide the calculation of damages of Telasi and Inter RAO, [REDACTED], by 25 January 2022. The Tribunal also requested that the Parties provide, by 8 November 2021, an update [REDACTED].

18. On 25 October 2021, the Respondents requested an extension for the submission of JER3 until 27 October 2021. The Claimants did not take a position on the Respondents' request and the Tribunal granted the extension requested by the Respondents.

19. On 27 October 2021, the Parties informed the Tribunal that their experts were finalizing JER3 and that they expected to submit it the following day.

20. On 28 October 2021, the Parties submitted JER3 together with Exhibits MP-136 through MP-140 and BM-49.

21. On 2 November 2021, in light of the Parties' joint request to extend the deadline for their submissions on damages [REDACTED], the Tribunal requested an extension of its deadline for issuing the Final Award [REDACTED]. On 3 November 2021, the SCC Secretariat granted the extension for the issuance of the Final Award.

22. On 2 November 2021, the Claimants requested that, in light of the deferral of the Tribunal's award relating to the assessment of damages for the period [REDACTED], the Tribunal allocate the legal costs incurred to the date of this Second Partial Award on Damages in this award.

23. On 8 November 2021, the Respondents opposed the Claimants' request on the basis that the Tribunal should take a decision on the costs of the arbitration only after it had decided all the disputed issues between the Parties in both the SCC and ICSID arbitrations. The Respondents also submitted that it would not be practical for the Tribunal to allocate costs before the outcome of the ICSID arbitration since the Parties had not segregated their costs between the two arbitration proceedings.

24. On 9 November 2021, the Parties submitted a joint update [REDACTED]
[REDACTED]
[REDACTED], together with Exhibits R-0110 through R-0114.

25. On 12 November 2021, the Tribunal denied the Claimants' request relating to the award of costs and confirmed its decision in the First Partial Award on Damages to defer the determination of costs until the Final Award.

IV. FACTUAL OVERVIEW

26. In the First Partial Award on Damages, the Tribunal made the following findings:

For the reasons set out above, the Tribunal has reached the following conclusions in respect of the calculation of damages:

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]
- d) [REDACTED]
- e) [REDACTED]

- f) [REDACTED]
- g) [REDACTED]
- h) [REDACTED]
- i) [REDACTED]
- j) [REDACTED]
- k) [REDACTED]
- l) [REDACTED]

27. On 4 August 2021, the ICSID Secretariat wrote to the Parties to provide the following directions from the Tribunal regarding the calculation of damages:

[REDACTED]

In the Partial Award on Damages, the Tribunal has requested that the Parties' experts adjust their models and recalculate damages figures in accordance with its Directions on Quantum and the directions set out in the award (Partial Award on Damages, paragraphs 168-171). The Tribunal requests that the Parties consult and jointly propose a date by which their respective experts' recalculations can be prepared and submitted to the Tribunal in the form set out in paragraph 169 of the Partial Award on Damages. The Tribunal requests that the Parties provide

⁷ First Partial Award on Damages, ¶¶ 168-171.

a response in this regard at their earliest convenience and, in any event, by 3 September 2021.

Once it has received the recalculations requested, the Tribunal will finalize its assessment of damages [REDACTED] and issue an award on damages, including interest, covering this period.

[REDACTED]

A. Gardabani: as indicated at paragraphs 68 and 82 of the Partial Award on Damages, Gardabani's losses and the damages owing to it can be assessed on the basis of the Directions on Quantum and the Tribunal's directions in the Partial Award on Damages. The Parties' experts should adjust their models and recalculate Gardabani's losses on that basis. The Parties and their experts should provide these recalculations together with their recalculations [REDACTED].

B. Telasi/Inter RAO: as set out in paragraph 170 of the Partial Award on Damages, the Tribunal requests that the Parties and their experts consult and advise it jointly by 3 September 2021 as to when they could submit their calculation of losses incurred by Telasi during the period [REDACTED].

[REDACTED]

With respect to this period, the Tribunal requests an update on [REDACTED] and submissions as to when the Parties and their experts will be able to provide reliable calculations of the losses to Telasi/Inter RAO. The Tribunal requests submissions from the Parties in this regard at the Parties' earliest convenience and, in any event, by, 10 September 2021. The Tribunal will then set the procedure and schedule for the assessment of damages and/or provide further directions, as appropriate.

The Tribunal's current intention is to determine damages to Telasi/Inter RAO [REDACTED] in the Final Award, which will include the determination of costs for the entire arbitration. At the appropriate time, the Tribunal will invite the Parties to update their submissions on costs.⁸

⁸ The Tribunal's Directions on the Calculation of Damages, dated 4 August 2021.

28. In this Partial Award, the Tribunal determines damages owing to:

- a) [REDACTED]
[REDACTED]
[REDACTED]
- b) [REDACTED]
[REDACTED]
- c) [REDACTED]
[REDACTED]
- d) [REDACTED]
[REDACTED]

V. POSITIONS OF THE PARTIES

29. The Parties' positions on the quantification of damages are set out in JER3 which was accompanied by their experts' respective calculations model, detailed calculations and exhibits. In their report, the Parties' experts, Mr. Michael Peer and Dr. Boaz Moselle (the "Experts") set out their agreement on the damages suffered by Gardabani on the basis of a valuation date [REDACTED]. The Experts also agreed on the damages suffered by Telasi and Inter RAO for the period from [REDACTED]. However, there is a dispute between the Experts and the Parties as to which is the appropriate valuation date. The Claimants' expert, Mr. Peer, believes that the appropriate valuation date should be [REDACTED], and he has provided an alternative calculation of damages on that basis. The Respondents' expert, Dr. Moselle, is of

the view that the appropriate valuation date is [REDACTED]. He has not provided calculations on the basis of a calculation date of [REDACTED].

30. The Tribunal has carefully reviewed JER3 together with the Experts' respective models, underlying calculations and exhibits and sets out its decisions below.

VI. DECISION AND ANALYSIS

A. Damages suffered by Gardabani

31. The Parties' experts have agreed on damages calculated on the basis of a valuation date of [REDACTED], as follows:

The Khrami Companies

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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32. The Experts have calculated the amount of [REDACTED] on a free cash flow to equity ("FCFE") basis as Gardabani is the parent company of the two Khrami Companies which suffered the direct effect of the Respondents' breaches of the Khrami SPA.

33. The calculation is in accordance with the Tribunal's directions in the First Partial Award on Damages and its directions of 4 August 2021. Accordingly, the Tribunal finds that Gardabani is entitled to [REDACTED] on account of its claims in this arbitration.

⁹ JER3, ¶ 2.8.

B. Damages suffered by Telasi and Inter RAO

34. There is a difference between the Experts with respect to the appropriate valuation date to use for the calculation of damages to Telasi and Inter RAO for the period [REDACTED]. Mr. Peer maintains that the appropriate valuation date is [REDACTED], while Dr. Moselle is of the view that the appropriate valuation date is [REDACTED].

35. In the event the Tribunal determines that the appropriate valuation date is [REDACTED] and that they should use information available as of that date in their calculations and not consider [REDACTED], the Experts have agreed that the amounts owing on the claims by Telasi and Inter RAO are as follows:

Telasi

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Inter RAO

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

36. The Experts have confirmed that the agreed amounts set out above include the amounts owing to the Respondents pursuant to their successful counterclaim [REDACTED]

[REDACTED].¹⁰

37. However, Mr. Peer maintains that the appropriate valuation date is [REDACTED]. Using that date, he calculates the damages to Telasi and Inter RAO as follows:

Telasi

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Inter RAO

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

¹¹

38. Mr. Peer is of the view that in order to comply with the Tribunal's directions to calculate

[REDACTED]
[REDACTED]

¹⁰ JER 3, ¶ 2.9.

¹¹ JER3, ¶ 2.10.

[REDACTED]. According to Mr. Peer, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹²

39. In Mr. Peer's view, Dr. Moselle's approach of using the valuation date of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹³

40. Mr. Peer reviews Telasi's actual performance [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹² JER3, p. 6.
¹³ JER3, p. 6.

[REDACTED]

[REDACTED].¹⁶ The total increase in damages under this approach is [REDACTED].

43. Dr. Moselle's view is that since the Tribunal has defined [REDACTED]
[REDACTED], his
understanding is that the valuation date of damages for Telasi should be [REDACTED]. In his
view, using a valuation date of [REDACTED]
[REDACTED]. However, in his view this is not
possible.

44. First, all of the information required to update the But-For scenario to [REDACTED] is not
available since [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

45. Further, even if it were possible to update Telasi's But-For scenario to a more recent date,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

¹⁶ JER3, p. 8.

46. Dr. Moselle also disagrees with Mr. Peer’s conclusion that Telasi’s actual performance [REDACTED]

[REDACTED]

[REDACTED]. According to Dr. Moselle,

[REDACTED]

[REDACTED].¹⁷

47. Dr. Moselle also referred to [REDACTED]

[REDACTED]

48. In addition, Dr. Moselle is of the view that while [REDACTED]

[REDACTED]

¹⁷ JER3, p. 8.

[REDACTED]

49. Finally, in Dr. Moselle's view the Tribunal has not requested the valuation of Telasi's damages as of [REDACTED] because:

- a) [REDACTED]
[REDACTED]
[REDACTED]
- b) [REDACTED]
[REDACTED]
[REDACTED]; and
- c) [REDACTED]
[REDACTED]
[REDACTED]¹⁸

50. In the First Partial Award on Damages, the Tribunal requested that the Experts confer and attempt to reach agreement on the appropriate damages to Telasi and Inter RAO for the period [REDACTED].¹⁹ In its directions of 4 August 2021, the Tribunal requested that the Parties and their Experts consult and advise as to when they could submit their calculations of losses incurred by Telasi [REDACTED]

¹⁸ JER3, p. 9.

¹⁹ See ¶¶ 84 and 170 of the First Partial Award on Damages.

[REDACTED]. The Parties have been unable to agree to damages [REDACTED] due to their difference on the appropriate valuation date.

51. Having considered the Experts' views, the Tribunal has determined that the appropriate valuation date is [REDACTED]. In the Tribunal's view, the valuation date should be [REDACTED]

[REDACTED]

52. Further, the Tribunal accepts Dr. Moselle's point that [REDACTED]

[REDACTED]

[REDACTED]

53. For these reasons, the Tribunal finds that the appropriate valuation date for Telasi's and Inter RAO's damages is [REDACTED]. The Tribunal is satisfied that this provides a reliable basis for the assessment of those damages.

54. Accordingly, the Tribunal prefers and adopts the Experts' estimate of damages using the valuation date of [REDACTED], which yields total damages [REDACTED]
[REDACTED]
[REDACTED].

55. As the Claimants have stated, they do not seek double recovery whether as between claimant companies or as between this arbitration and the ICSID arbitration.²⁰ In this regard, the Claimants submitted as follows:

As demonstrated above, the Claimants have all suffered losses in relation to Telasi and the Khrami Companies, with some acquiring a right to compensation based on contract and some based on the Treaty. Naturally, the Claimants (and the Inter RAO Group as a whole) do not seek double compensation for the harm caused, whether as between the SCC and ICSID arbitrations or as between Claimants. However, each of the Claimants has an independent right to compensation, and until compensation is *actually paid* to one of them there can be no double compensation.

Subject to the requirement that compensation for a single to harm (to Telasi and the Khrami Companies, respectively) can only be paid once, the Claimants should be permitted discretion to decide among them how best to enforce the compensation rights to which they are all entitled. The Claimants hope that Georgia will comply voluntarily with this Tribunal's award. Otherwise, the Claimants' enforcement strategy may be dictated by various considerations, including the relative enforceability of SCC and ICSID awards and Georgia's ability to exercise police powers to influence Telasi and the Khrami Companies.²¹

²⁰ Claimants' Memorial, ¶¶ 324, 329-330.

²¹ Claimants' Memorial, ¶¶ 329-330. See also, Tr. Day 1 (Claimants' Opening Statement), pp. 145-146.

56. The Tribunal will address the question of possible double recovery and the admissibility of the claims for damages in the ICSID Arbitration in the ICSID Award which the Tribunal will issue separately, in due course. For the purposes of this arbitration, the relevant question relates to the payment of compensation due to Telasi and Inter RAO.

57. In their request for relief, the Claimants request the payment of damages within a range depending on the loss suffered by the relevant Claimants: Telasi (on an FCFF basis) and Inter RAO (on an FCFE basis).²² The Claimants explained that Telasi's claim at the company level was higher than that on behalf of Inter RAO at the shareholder level; the difference being (a) tax on dividends, and (b) the fact that Silk Road (and Inter RAO) only owned 75% of Telasi.²³ In this regard, the Tribunal understands that Inter RAO's damages in the amount of [REDACTED] calculated on an FCFE basis are subsumed within Telasi's damages of [REDACTED] calculated on an FCFF basis. Accordingly, the Respondents are required to pay compensation of either [REDACTED] to Telasi or [REDACTED] to Inter RAO.

58. The Claimants also request that the Tribunal declare that the compensation it orders is on an after-tax basis. In addition, they request the award of an indemnity in respect of any taxation of the award (by the tax authorities of Georgia, The Netherlands, the Russian Federation or any other country). According to them, the valuation of their losses has been prepared by Mr. Peer on an

²² Claimants' Opening Presentation, Demonstrative No. 17; Claimants' Closing Presentation, Demonstrative No. 19; Tr. Day 1 (Claimants' Opening Statement), pp. 145-146. The Claimants' demonstratives also provide a figure for the losses suffered Silk Road, which is the same as the loss suffered by Inter RAO with respect to the claims related to Telasi.

²³ Tr. Day 1 (Claimants' Opening Statement), p. 146.

after-tax basis. As a result, any taxation of the amounts awarded to the Claimants would result in their effectively being taxed twice for the same income.²⁴

59. The Claimants submit that each of Telasi and Inter RAO have separate claims and an independent right to an award of compensation. In addition, they say that they should be permitted discretion to decide how best to enforce those awards. Further, since their damages have been calculated on an after-tax basis, the Claimants request that the Tribunal order compensation on that basis, together with an indemnity in respect of any taxation of the award by the tax authorities of Georgia, The Netherlands, the Russian Federation or any other country. Otherwise, any taxation of the amounts awarded would result in their being taxed twice for the same income.

60. In the Tribunal's view, the Claimants' request for separate awards for the payment of compensation to each of Telasi and Inter RAO is not practical. The tax treatment of compensation paid to Inter RAO in The Netherlands or the Russian Federation was not addressed by the Parties in any detail and appears complex, which creates uncertainty and potential complications regarding payment of full compensation to Inter RAO. As a result, the Tribunal is not satisfied that separate orders of compensation to each of Telasi and Inter RAO are appropriate. Rather, an order to pay compensation to Telasi will provide simplicity and greater certainty and avoid the possible need to monitor and address questions of indemnity from taxes relating to compensation paid to Inter RAO.

61. As the Experts have calculated damages after taxes, Telasi is entitled to an award on that basis, together with an order providing for an indemnity from liability for taxes imposed by the Georgian taxation authorities.

²⁴ Claimants' Memorial, ¶¶ 331-333, 337(c); Claimants' Reply, ¶ 270(c).

62. Accordingly, [REDACTED], the Tribunal orders the Government of Georgia to pay to Telasi the amount of [REDACTED]. This amount is to be paid on an after-tax basis and the Claimants are entitled to an indemnity in respect of any taxation of the award by the tax authorities of Georgia.

VII. INTEREST

63. The Parties have each requested the payment of interest on the amounts they have claimed against each other.

64. The Claimants submit that Mr. Peer established the present value of [REDACTED] losses as of the first valuation date he used [REDACTED]. The Claimants say that as that date (and, presumably, the updated valuation dates used in Mr. Peer's subsequent calculations) serves as the proxy for the date of the award, no separate pre-judgment interest is required.²⁵

65. The Claimants also submit that the Tribunal should award post-award interest at the reasonable commercial rate that it deems applicable. Further, they submit that interest should be compounded on a quarterly basis accruing until payment is made in full.²⁶

66. The Respondents claim pre- and post-award interest on all amounts due to Georgia under the 2013 Memorandum on the basis of the [REDACTED]

[REDACTED]²⁷

²⁵ Claimants' Memorial, ¶ 325.

²⁶ Claimants' Memorial, ¶¶ 326-328, 337(b); Claimants' Reply, ¶ 270(b).

²⁷ Respondents' Rejoinder, ¶ 480. In their Counter-Memorial, the Respondents claimed pre- and post-award interest at the rate [REDACTED]; Respondents' Counter-Memorial, ¶ 412(a)(iv).

67. The Respondents also submitted that there is no basis to award compound interest as requested by the Claimants. The Respondents say the Claimants have not demonstrated that compound interest is permitted by Georgian law. In any event, they say that the payment of compound interest is not automatic and that the Claimants have not demonstrated any special circumstances which would justify compounding interest in this case.²⁸

68. In the Tribunal's view, it will require further information and submissions in order to make an award of interest. Accordingly, the Tribunal will invite further submissions from the Parties and defers the Parties' claims for interest to the Final Award.

VIII. CONCLUSIONS AND ORDER

69. For the reasons set out above, the Tribunal:

- a) Orders the Respondents to pay to Gardabani [REDACTED]
[REDACTED];
- b) Orders the Respondents to pay to Telasi [REDACTED]
[REDACTED];
- c) Declares that the amounts awarded in paragraphs 69(a) and (b) above are awarded on an after-tax basis;
- d) Orders the Respondents to indemnify the Claimants for any taxation liability that arises in Georgia in relation to the amounts awarded in paragraphs 69(a) and (b) above;

²⁸ Respondents' Counter-Memorial, ¶¶ 408-411.

- e) Defers the quantification of any damages owing on account of losses suffered by Telasi and Inter RAO for the period [REDACTED] to the Final Award;
- f) Defers the Parties' claims for interest to the Final Award;
- g) Defers the Parties' claims for costs to the Final Award.

Place of Arbitration: Stockholm, Sweden



Professor Stanimir Alexandrov
Arbitrator

23 November 2021

Date



Professor Zachary Douglas QC
Arbitrator

*Subject to the partial dissenting opinion
appended to the Partial Award on liability*

23 November 2021

Date



Mr. Henri Alvarez QC
President

23 November 2021

Date