

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Neustar, Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/20/7)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Professor Julian D.M. Lew, QC, President of the Tribunal

Professor Yves Derains, Arbitrator

Professor Dr. Kaj Hobér, Arbitrator

Secretary of the Tribunal

Veronica Lavista

9 July 2021

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Introduction

The first session of the Tribunal was held on 15 June 2021, at 10 a.m. (EST), by videoconference. The session was adjourned at 11:30 a.m.

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

Professor Julian D.M. Lew, QC , President of the Tribunal

Professor Yves Derains, Arbitrator

Professor Dr. Kaj Hobér, Arbitrator

Assistant to the President

Ms. Simona Ivanova Valkova

ICSID Secretariat:

Dr. Veronica Lavista, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Teddy Baldwin, Steptoe & Johnson, LLP

Ms. Chloe Baldwin, Steptoe & Johnson, LLP

Mr. José Manuel Álvarez Zárate, Álvarez Zárate & Asociados

Participating on behalf of the Respondent:

Ms. Ana María Ordoñez Puentes, Agencia Nacional de Defensa Jurídica del Estado

Mr. Giovanni Vega Barbosa, Agencia Nacional de Defensa Jurídica del Estado

Ms. Yadira Castillo, Agencia Nacional de Defensa Jurídica del Estado

Mr. Laurent Gouiffès, Hogan Lovells

Mr. Daniel E. González, Hogan Lovells

Ms. Melissa Ordoñez, Hogan Lovells,

Ms. Juliana de Valdenebro Garrido, Hogan Lovells

Mr. Lucas Aubry, Hogan Lovells

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 17 May 2021; and
- The Parties' comments on the Draft Procedural Order received on 10 and 14 June 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree. The Parties' additional comments received on 25 June 2021.

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 timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on 21 April 2021 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.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 21 April 2021.

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:

3.2.1. 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

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- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his 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, including by any appropriate means of communication.
 - 4.2. Where assembling quorum could cause excessive delay and the matter is urgent the President may decide without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
5. Rulings 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. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If an interim decision has not been issued within three months after the final submission on a particular matter, or the award has not been issued within six months after the final submission, the Tribunal will provide the Parties with status updates every month.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 5.5. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary electronically in the form of a letter or email.
 - 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

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 Veronica Lavista, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Veronica Lavista
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-8887
Fax: + 1 (202) 522-2615
Email: vlavista@worldbank.org
Paralegal name: Vanina Bauza
Paralegal email: vbauza1@worldbank.org

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

Veronica Lavista
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties

Arbitration Rule 18

8.1. Each Party shall be represented by its counsel (below). If either Party wishes to change or designate additional agents, counsel, or advocates, that Party shall first promptly notify the other Party, the Tribunal and the Tribunal Secretary to ensure that no conflict of interest exists. Such proposed designation of additional agents, counsel or advocates shall become effective upon the Tribunal's approval, after giving the other Party an opportunity to comment. The Tribunal may refuse such appointment if it would cause a conflict of interest and affect the integrity of the proceedings.

For Claimant

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and
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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 22 April 2021, ICSID requested that each Party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received Claimant's payment on 17 May 2021. ICSID had not received the Respondent's payment at the time of the issuance of this Procedural Order.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the Parties so agree. In accordance with §20.2 the hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means 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

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- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence shall be in English.

For Parties' Pleadings and Oral Presentations

- 11.3. Pleadings, expert opinions and witness statements may be submitted in either English or Spanish. If submitted in Spanish, the Parties shall submit translations of any such documents into English within 15 business days.
- 11.4. Accompanying documentation shall be submitted in its original language, English or Spanish as the case may be. If submitted in Spanish, the Parties shall translate any such documents into English when specifically quoted in their pleadings within 15 business days. For any other documents, the Parties may submit a translation into English. In any instance, the Tribunal may require a Party to submit a translation of any accompanying documentation.
- 11.5. Documents filed in a language other than English or Spanish must be accompanied by a translation into English.
- 11.6. 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.
- 11.7. 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.
- 11.8. Documents exchanged between the Parties in a language other than English under §15 below (Production of Documents) need not be translated.

For Hearing

- 11.9. The testimony of a witness called for examination during the hearing who cannot give evidence in English or who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.10. The Parties will notify the Tribunal, as soon as possible, and no later than at any pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.11. 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.

For Tribunal's Documents except the Award

11.12. The Tribunal shall make any order or decision in English and will endeavour to provide the Parties with a translation into Spanish within 10 business days of the order or decision. Both language versions shall be equally authentic.

For Tribunal's Award

11.13. The Tribunal shall render any award, or any decision dispositive of the present proceeding, in English and Spanish simultaneously. Both language versions shall be authentic.

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.

12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.

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.

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

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

13.1. By the relevant filing date, the Parties shall:

13.1.1. submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and

13.1.2. within 3 business days, upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.

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

- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted (please follow the naming conventions contained in **Annex A**).
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat at the address indicated at §7.3 above and to each Member of the Tribunal at the addresses indicated at §13.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.

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

Professor Julian D.M. Lew	Professor Yves Derains	Professor Kaj Hobér
20 Essex Street	Derains & Gharavi	Mannheimer Swartling
London	25 rue Balzac	Advokatbyrå AB
WC2R 3AL	Paris 75008	Norrlandsgatan 21, P.O. Box
United Kingdom	France	1711
		Stockholm SE-111 87
		Sweden

- 13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.7. A filing shall be deemed timely if sent 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 Parties shall submit their written pleadings in accordance with the Procedural Timetable set out at **Annex B** and with the rules set out below.
- 14.2. The Parties agree to have a separate phase for damages, to be scheduled following a decision on the merits.

15. Production of Documents

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

- 15.1. The Parties shall have an opportunity to request a relevant and material number of documents (Request for Documents) from the other Party after the filing of the Claimant's Memorial on the Merits and the Respondent's Memorial on Objections to Jurisdiction (if applicable) and Counter-Memorial on the Merits. The document production phase shall consist of the following stages to be presented in a Word document using the Redfern schedule:
 - 15.1.1. On the date provided in **Annex B**, each Party may submit a request for production of documents to the other Party. The request shall be made in the form of a Redfern Schedule as attached in **Annex C** hereto, in both Word and PDF format, and shall not be copied to the Tribunal or the Tribunal Secretary.
 - 15.1.2. On the date provided in **Annex B** the other Party shall, using the Redfern Schedule provided by the first Party, provide the requesting Party with its reasons and/or objections for its failure or refusal to produce responsive documents.
 - 15.1.3. On the date provided in **Annex B** the other Party shall produce the requested documents to which it has not filed any objection.
 - 15.1.4. On the date provided in **Annex B**, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule and shall submit such Redfern Schedule to the Tribunal, with a copy to the other Party (in both Word and PDF formats).
 - 15.1.5. The Tribunal will make its best efforts to rule on the objections within four weeks of receiving the Redfern Schedule. Provided that the Tribunal rules within four weeks of receiving the Redfern Schedule, a Party shall produce documents ordered by the Tribunal by the date provided in **Annex B**.
- 15.2. The Tribunal and the Parties shall be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) in relation to document production.
- 15.3. Documents shall be communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §16 below.
- 15.4. The requests for production of documents of the Parties shall be relevant and material.
- 15.5. If a Party fails, without satisfactory explanation, to produce any document requested in a Request for Documents to which it has not objected in due time, or

fails to produce any document or category of documents ordered by the Tribunal, the Tribunal may infer that such document or category of documents is adverse to the interests of the non-complying Party.

- 15.6. If the Tribunal determines that a Party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.
- 15.7. Further requests for the production of documents sought by either Party, if any, shall be permitted only at the discretion of the Tribunal. The request must be substantiated.

16. Submission of Documents

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

- 16.1. 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.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, without prior written permission of the Tribunal. The Tribunal shall consider whether special circumstances exist based on a reasoned written request followed by observations from the other Party.
 - 16.3.1. 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.
 - 16.3.2. 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.
- 16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing

a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §16.5.4.

16.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.

16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.

16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.

16.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.

16.8. 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 document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, 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.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

17.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.

17.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, without prior written consent of the Tribunal. The Tribunal shall consider whether special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §16.3).

17.3. Each witness statement and expert report shall be signed and dated by the witness.

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

- 18.1. A Party may be called upon by the opposing Party to produce at the hearing for cross-examination any witness or expert whose written testimony has been advanced with the Pleadings. The examination of a witness or expert by video conference may be permitted for justified reasons at the discretion of the Tribunal. If a witness or expert whose appearance has been requested pursuant to §19.1 fails without a valid reason to appear for testimony at a hearing, even by video conference, the Tribunal shall assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.2. The Parties shall notify the opposing Party which witnesses and experts presented by the opposing Party they intend to call for cross-examination on the date specified in the Procedural Timetable at **Annex B**. Shortly after the Parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the Parties, it wishes to question, if any. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party and who has not been called by the Tribunal to testify shall not be deemed established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.3. Witnesses and experts shall be examined by each Party under the control of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in Arbitration Rule 35(2), and experts the declaration set out in Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure. The Tribunal shall, at all times, have the power to request the presence of any witness or expert presented by the Parties for examination at the hearing, upon application by any Party or on its own motion.
- 18.4. Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness may conduct a brief direct examination at the hearing. Experts may summarize their reports and findings, either through direct examination or in the form of a brief presentation. Any witness or expert called for direct examination may be cross-examined by the other Party and questioned by the Tribunal.
- 18.5. Being duly informed of the dates of the hearing, the Parties will as quickly as possible inform their potential witnesses and experts of such dates to secure their presence at the hearing and avoid any disruption in the procedural timetable.

- 18.6. Witnesses and experts may be cross-examined on relevant matters that either were addressed or presented in the witness's statement(s) or the expert's report(s), or about any evidence in the record of which the witness could reasonably be expected to have personal knowledge and on matters of credibility. The scope of re-examination shall be strictly limited to the matters that have arisen in cross-examination.
- 18.7. The Tribunal may organize the confrontation of two or more experts, including by way of witness conferencing, if it deems it appropriate, after consultation with the Parties.
- 18.8. Each Party shall advance the costs connected with the evidence of its witnesses or experts or any other witness (other than witnesses and experts of the other Party) that such Party requests to attend the hearing, including the cost of preparing the witness statements, expert reports, and attending the hearing, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs. The costs of any witness or experts called to testify by the Party that presents such witness or expert or called by the Tribunal shall be covered by the Party that is offering such witness or expert, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference between the Tribunal, or its President, and the Parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly—or, where they are unable to agree, separately—a proposal regarding a daily schedule 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 may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §10 above.

- 20.3. The date of the hearing shall be determined at a later stage.
- 20.4. 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.
- 20.5. In accordance with Article 10.21(2) of the US-Colombia TPA, the final hearing shall be open to the public, subject to a procedure to ensure “protected information” is not disclosed to the public during the hearing. Prior to the pre-hearing organizational meeting, Parties will discuss the proper limitations that need to be taken to protect non-disclosure information during the hearing.
- 20.6. To the extent that there is a discrepancy between the terms of this provision and the US-Colombia TPA, including questions of applicability, the US-Colombia TPA shall prevail.

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(s) 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, if possible, 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 Parties 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 Parties in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 22.1. At the conclusion of the hearing, and in consultation with the Parties, the Tribunal shall decide whether to order post-hearing briefs. In the affirmative, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No additional evidence may be produced together with the post-hearing briefs, except with leave from or on the request of the Tribunal.

22.2. In accordance with Arbitration Rule 28(2), promptly after the closure of the proceeding, each Party shall submit to the Secretary of the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), Article 10.21 of the US-Colombia TPA

23.1. Subject to the requirements of Article 10.21 of the US-Colombia Trade Promotion Agreement, the Parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

24. Non-Disclosure of Information

Articles 10.21, 10.28, 22.2 and 22.4 of the US-Colombia TPA

24.1. The Parties agree that “protected information” is as defined in Article 10.28 of the US-Colombia TPA. Article 10.28 states in relevant part, “‘protected information’ means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law”. Such information may not be publicly disclosed, in accordance with §25 (Transparency) below.

24.2. The Parties further agree that confidential business information includes, but is not limited to:

24.2.1. trade secrets;

24.2.2. financial, commercial, scientific or technical information that is treated consistently in a confidential manner by either disputing Party, provincial, territorial or municipal government or third party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain;

24.2.3. information the disclosure of which could result in material financial loss or gain to the disputing Party, provincial, territorial or municipal government or third party to which it relates;

24.2.4. information the disclosure of which could interfere with contractual or other negotiations of the disputing Party, provincial, territorial or municipal government or third party to which it relates; or

24.2.5. other communications treated as confidential in furtherance of settlement between the disputing Parties.

24.3. In addition, and in accordance with Articles 22.2 or Article 22.4 of the US-Colombia TPA (hereinafter, “Article 22.2 and 22.4 Information”):

24.3.1. The Respondent, as a Party to the TPA, shall not be required “to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests” (Article 22.2(a)).

24.3.2. The Respondent, as a Party to the TPA shall not be required “to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private” (Article 22.4).

The production of such information may not be compelled from the Respondent, nor may such information be publicly disclosed, in accordance with §25 (Transparency), below.

24.4. For the purposes of this Order, “protected information” and “Article 22.2 and 22.4 Information” are collectively referred to as “non-disclosure information”.

24.5. To the extent there is a discrepancy between the terms of this provision and the US-Colombia TPA, including questions of applicability, the US-Colombia TPA shall prevail.

25. Transparency

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); Article 10.21 of the US-Colombia TPA

25.1. In accordance with Article 10.21(2) of the US-Colombia TPA, hearings shall be open to the public, subject to a procedure to ensure “protected information” is not disclosed to the public during the hearing.

25.2. The Parties consent to ICSID’s publication of the documents listed in Article 10.21(1) of the US-Colombia TPA. They are: (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials and briefs submitted to the Tribunal by a disputing Party and any written submissions submitted to the Tribunal pursuant to Articles 10.20(2), 10.20(3) and 10.25 of the US-Colombia TPA; (d) minutes or transcripts of hearings, where available; and (e) orders, decisions, and award of the Tribunal.

25.3. For purposes of §25.2 above, the reference in Article 10.21(1) of the US-Colombia TPA to the “notice of arbitration” and to “pleadings, memorials and briefs” does not include accompanying material (i.e. witness statements, expert reports, exhibits and legal authorities).

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- 25.4. In accordance with Article 10.21(2) of the US-Colombia TPA, the documents published under that provision shall not contain “non-disclosure information.”
- 25.5. The Parties agree that the following procedure applies to the redaction of “non-disclosure information” prior to publication.

25.5.1. For the notice of intent and the notice of arbitration, which pre-date this order:

Within fourteen (14) calendar days of the date of this Order, Claimant shall submit redacted versions that do not contain any “non-disclosure information”. Within fourteen (14) calendar days of the date that the redacted versions are submitted to the Tribunal, Respondent shall notify Claimant and the Tribunal whether it objects to any of Claimant’s redactions. If Respondent objects to any of Claimant’s redactions, the Parties shall undertake their best efforts to resolve these objections. If the Parties cannot resolve Respondent’s objections within fourteen (14) calendar days and upon the request of either Party, then the Tribunal will decide the issue.

25.5.2. For pleadings, memorials, and briefs:

Any Party claiming that certain information constitutes “non-disclosure information” shall clearly designate the information at the time it is submitted to the Tribunal and submit a redacted version of the document, in electronic version only, that does not contain the information within fourteen (14) calendar days. Within twenty-one (21) calendar days of the date of the redacted document’s submission to the Tribunal, the other Party shall notify the Party submitting the document and the Tribunal whether it objects to any of the redactions. The Parties shall undertake their best efforts to resolve these objections. If the Parties cannot resolve the objections within fourteen (14) calendar days and upon the request of either Party, then the Tribunal will decide the issue.

If the Tribunal determines that any information that a Party sought to redact is not “non-disclosure information”, that Party may (i) “withdraw all or part of its submission containing such information” or (ii) “agree to resubmit complete and redacted documents with corrected designations in accordance with the Tribunal’s determination” (Article 10.21(4)(d)).

“In either case, the other [] Party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted in the information” (Article 10.21(4)(d)).

25.5.3. For minutes or transcripts of hearing and orders, decisions, and award of the Tribunal:

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The Parties shall within twenty-one (21) calendar days of dispatch by the ICSID Secretariat submit redacted versions that do not contain any “non-disclosure information”. Within fourteen (14) calendar days of the date that the redacted versions are submitted to the Tribunal, each Party shall notify the other Party and the Tribunal whether it objects to any of the redactions. If there are objections, the Parties shall undertake their best efforts to resolve these objections. If the Parties cannot resolve the objections within fourteen (14) calendar days and on the request of either Party, then the Tribunal will decide the issue.

25.5.4. Neither the Parties nor the Tribunal shall disclose to the United States of America (the non-disputing State party to the US-Colombia TPA) or to the public any “non-disclosure information” redacted in accordance with this Order or a subsequent ruling of the Tribunal.

25.6. To the extent there is a discrepancy between the terms of this provision and the US-Colombia TPA, including questions of applicability, the US-Colombia TPA shall prevail.

[SIGNATURE]

Professor Julian D.M. Lew, QC
President of the Tribunal
Date: 9 July 2021

ANNEX A

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i> <i>R-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i> <i>RL-0002-ENG</i>

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Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-##### to C-#####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

ANNEX B

PROCEDURAL CALENDAR

Explanatory note. In the following tables, the Parties have added the number of days proposed for each step in the third column, and the cumulative timeline from key base dates in the fourth column. The four scenarios are as follows:

- Scenario 1: no request for bifurcation raised.
- Scenario 2: request for bifurcation raised and denied.
- Scenario 3: request for bifurcation raised and granted, and jurisdiction rejected following bifurcated proceedings.
- Scenario 4: request for bifurcation raised and granted, and jurisdiction upheld following bifurcated proceedings.

SCENARIO 1: No request for bifurcation raised

Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Procedural Order No. 1 (“ PO1 ”)			9 July 2021
Claimant	Memorial on Jurisdiction and the Merits	98 days	PO1 + 98 days	15 October 2021
Respondent	Counter-Memorial on Jurisdiction and the Merits	119 days	PO1 + 217 days	11 February 2022
Non-Disputing Party	Non-Disputing Party submission (if any)	TBD	TBD	TBD
Parties	Requests to Produce Documents	21 days	PO1 + 238 days	4 March 2022
Parties	Objections to Requests	14 days	PO1 + 252 days	18 March 2022
Parties	Replies to objections	14 days	PO1 + 266 days	1 April 2022

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Target Date for Rulings by the Tribunal on Objections to Document Requests	21 days	PO1 + 287 days	22 April 2022
Parties	Production of Document (both non-contested and as ordered by the Tribunal)	28 days	PO1 + 315 days	20 May 2022
Parties	Parties' Comments to Non-Disputing Party Submission (if any)	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively
Claimant	Reply on Jurisdiction and the Merits	56 days (or 147 days from Counter-Memorial)	PO1 + 371 days	15 July 2022
Respondent	Rejoinder on Jurisdiction and the Merits	98 days	PO1 + 469 days	21 October 2022
Parties	List of witnesses and experts to be cross-examined during the hearing	At least six weeks before the dates for the Hearing	TBD	TBD
All	Pre-hearing organizational teleconference	At least four weeks before the dates for the Hearing	TBD	TBD
All	Hearing on Jurisdiction and the Merits	To be confirmed in consultation with the Tribunal	TBD	TBD
Parties	Post-Hearing Briefs / Costs submissions	To be confirmed at the Hearing	TBD	TBD

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Award on Jurisdiction and the Merits	TBD	TBD	TBD

SCENARIO 2: Request for bifurcation raised and denied

Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Procedural Order No. 1 (“PO1”)			9 July 2021
Claimant	Memorial on Jurisdiction and the Merits	98 days	PO1 + 98 days	15 October 2021
Respondent	Request for Bifurcation	28 days	PO1 + 126 days	12 November 2021
Claimant	Observations on Request for Bifurcation	28 days	PO1 + 154 days	10 December 2021
Tribunal	Target Date for Decision on Request for Bifurcation – Refused	42 days	PO1 + 196 days	21 January 2022
Respondent	Counter-Memorial on Jurisdiction and the Merits	119 days	PO1 + 315 days	20 May 2022
Non-Disputing Party	Non-Disputing Party submission (if any)	TBD	TBD	TBD
Parties	Requests to Produce Documents	21 days	PO1 + 336 days	10 June 2022
Parties	Objections to Requests	14 days	PO1 + 350 days	24 June 2022
Parties	Replies to objections	14 days	PO1 + 364 days	8 July 2022
Tribunal	Target Date for Rulings by the Tribunal on Objections to Document Requests	21 days	PO1 + 385 days	29 July 2022
Parties	Production of Document (both non-contested and as ordered by the Tribunal)	28 days	PO1 + 413 days	26 August 2022

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Parties	Parties' Comments to Non-Disputing Party Submission (if any)	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively
Claimant	Reply on Jurisdiction and the Merits	56 days (or 147 days from Counter-Memorial)	PO1 + 469 days	21 October 2022
Respondent	Rejoinder on Jurisdiction and the Merits	98 days	PO1 + 567 days	27 January 2023
Parties	List of witnesses and experts to be cross-examined during the hearing	At least six weeks before the dates for the Hearing	TBD	TBD
All	Pre-hearing organizational teleconference	At least four weeks before the dates for the Hearing	TBD	TBD
All	Hearing on Jurisdiction and the Merits	To be confirmed in consultation with the Tribunal	TBD	TBD
Parties	Post-Hearing Briefs / Costs submissions	To be confirmed at the Hearing	TBD	TBD
Tribunal	Award on Jurisdiction and the Merits	TBD	TBD	TBD

SCENARIO 3: Request for bifurcation raised and granted, and jurisdiction rejected following bifurcated proceedings

Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Procedural Order No. 1 (“ PO1 ”)			9 July 2021
Claimant	Memorial on Jurisdiction and the Merits	98 days	PO1 + 98 days	15 October 2021
Respondent	Request for Bifurcation	28 days	PO1 + 126 days	12 November 2021
Claimant	Observations on Request for Bifurcation	28 days	PO1 + 154 days	10 December 2021
Tribunal	Target Date for Decision on Request for Bifurcation – Granted (“ D.Bif ”)	42 days	PO1 + 196 days	21 January 2022
Respondent	Memorial on Jurisdiction	84 days	PO1 + 280 days	15 April 2022
Claimant	Counter-Memorial on Jurisdiction	84 days	PO1 + 364 days	8 July 2022
Parties	Requests to Produce Documents	14 days	PO1 + 378 days	22 July 2022
Parties	Objections to Requests	14 days	PO1 + 392 days	5 August 2022
Parties	Replies to objections	14 days	PO1 + 406 days	19 August 2022
Tribunal	Target Date for Rulings by the Tribunal on Objections to Document Requests	21 days	PO1 + 427 days	9 September 2022
Parties	Production of Document (both non-contested and as ordered by the Tribunal)	28 days	PO1 + 455 days	7 October 2022

Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Respondent	Reply on Jurisdiction	49 days	PO1 + 504 days	25 November 2022
Claimant	Rejoinder on Jurisdiction	63 days	PO1 + 567 days	27 January 2023
Parties	List of witnesses and experts to be cross-examined during the hearing	At least six weeks before the dates for the Hearing	TBD	TBD
All	Pre-hearing organizational teleconference	At least four weeks before the dates for the Hearing	TBD	TBD
All	Hearing on Jurisdiction	To be confirmed in consultation with the Tribunal	TBD	TBD
Parties	Post-Hearing Briefs / Costs submissions	To be confirmed at the Hearing	TBD	TBD
Tribunal	Award on Jurisdiction – jurisdiction denied	TBD	TBD	TBD

SCENARIO 4: Request for Bifurcation raised and granted, and jurisdiction upheld following bifurcated proceedings

Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Tribunal	Procedural Order No. 1 (“PO1”)			9 July 2021
Claimant	Memorial on Jurisdiction and the Merits	98 days	PO1 + 98 days	15 October 2021
Respondent	Request for Bifurcation	28 days	PO1 + 111 days	12 November 2021
Claimant	Observations on Request for Bifurcation	28 days	PO1 + 132 days	10 December 2021
Tribunal	Target Date for Decision on Request for Bifurcation – Granted	42 days	PO1 + 196 days	21 January 2022
Respondent	Memorial on Jurisdiction	84 days	PO1 + 280 days	15 April 2022
Claimant	Counter-Memorial on Jurisdiction	84 days	PO1 + 364 days	8 July 2022
Parties	Requests to Produce Documents	14 days	PO1 + 378 days	22 July 2022
Parties	Objections to Requests	14 days	PO1 + 392 days	5 August 2022
Parties	Replies to objections	14 days	PO1 + 406 days	19 August 2022
Tribunal	Target Date for Rulings by the Tribunal on Objections to Document Requests	21 days	PO1 + 427 days	10 September 2022
Parties	Production of Document (both non-contested and as ordered by the Tribunal)	28 days	PO1 + 455 days	7 October 2022

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Respondent	Reply on Jurisdiction	49 days	PO1 + 504 days	25 November 2022
Claimant	Rejoinder on Jurisdiction	63 days	PO1 + 567 days	27 January 2023
Parties	List of witnesses and experts to be cross-examined during the hearing	At least six weeks before the dates for the Hearing	TBD	TBD
All	Pre-hearing organizational teleconference	At least four weeks before the dates for the Hearing	TBD	TBD
All	Hearing on Jurisdiction	To be confirmed in consultation with the Tribunal	TBD	TBD
Parties	Post-Hearing Briefs / Costs submissions	To be confirmed at the Hearing	TBD	TBD
Tribunal	Decision on Jurisdiction – jurisdiction upheld (“ D.Juri ”)	[TBD]	[TBD]	[TBD]
Respondent	Counter-Memorial on Merits	91 days	D.Juri + 91 days	TBD
Non-Disputing Party	Non-Disputing Party submission (if any)	TBD	TBD	TBD
Parties	Secondary Requests to Produce Documents	21 days	D.Juri + 112 days	TBD
Parties	Objections to Requests	14 days	D.Juri + 126 days	TBD

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Parties	Replies to objections	14 days	D.Juri + 140 days	TBD
Tribunal	Target Date for Rulings by the Tribunal on Objections to Document Requests	21 days	D.Juri + 161 days	TBD
Parties	Production of Document (both non-contested and as ordered by the Tribunal)	28 days	D.Juri + 189 days	TBD
Parties	Parties' Comments to Non-Disputing Party Submission (if any)	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively	To be briefed in Reply and Rejoinder respectively
Claimant	Reply on Merits	56 days (or 147 days from Counter-Memorial)	D.Juri + 245 days	TBD
Respondent	Rejoinder on Merits	98 days	D.Juri + 343 days	TBD
Parties	List of witnesses and experts to be cross-examined during the hearing	At least six weeks before the dates for the Hearing	TBD	TBD
All	Pre-hearing organizational teleconference	At least four weeks before the dates for the Hearing	TBD	TBD
All	Merits Hearing	To be confirmed in consultation with the Tribunal	TBD	TBD

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Party	Action/Submission	Proposed Timeframe	Cumulative Timeline	Date
Parties	Post-Hearing Briefs / Costs submissions	To be confirmed at the Hearing	TBD	TBD
Tribunal	Award on Merits	TBD	TBD	TBD

ANNEX C

MODEL REDFERN SCHEDULE

No ·	Documents or Category of Documents Requested	Relevance and Materiality according to Requesting Party		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
		Ref. to Submissions or Exhibits	Comments			